

CAI
FN
-2003
L35




Legislative Proposals Relating to the Income Tax Act

Taxation of Non-Resident Trusts and Foreign Investment Entities

Published by
The Honourable John Manley, P.C., M.P.,
Deputy Prime Minister and Minister of Finance

October 2003

Canada



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

Legislative Proposals Relating to the Income Tax Act

Taxation of Non-Resident Trusts and Foreign Investment Entities

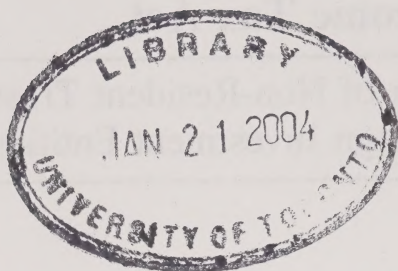
Published by
The Honourable John Manley, P.C., M.P.,
Deputy Prime Minister and Minister of Finance

October 2003



Department of Finance
Canada

Ministère des Finances
Canada



© Her Majesty the Queen in Right of Canada (2003)
All rights reserved

All requests for permission to reproduce this document
or any part thereof shall be addressed to
Public Works and Government Services Canada.

Available from the

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: (613) 943-8665
Fax: (613) 996-0901

Price : \$16.00 including GST

This document is available free on the Internet
at www.fin.gc.ca

Cette publication est également disponible en français.

Cat No.: F2-144/2003E
ISBN 0-660-19105-9

Table of Contents

Clause in Legis- lation	Section of the Income Tax Act	Topic	Page
1	12	Income from business or property	5
2	17	Loan to non-resident – Controlled foreign affiliate	5
3	39	Capital gain from disposition of property	5
4	51	Convertible property	6
5	52	Cost of certain property the value of which is included in income	7
6	53	Adjustments to cost base	7
7	70	Death of a taxpayer	9
8	73	<i>Inter vivos</i> transfers by individuals	11
9	75	Trusts – attribution	11
10	85	Definition of "eligible property"	12
11	85.1	Share for share exchange	12
12	86	Exchange of shares — reorganization	13
13	87	Amalgamations – non-resident trusts and foreign investment entities	13
14	91	Amounts to be included in respect of share of a foreign affiliate	13
15	94	Non-resident Trusts	14
16	94.1	Foreign Investment Entities — Imputed Income ..	54
16	94.2	Foreign Investment Entities – Mark-to-market	83
16	94.3	Foreign Investment Entities — Accrual	109
16	94.4	Foreign Investment Entities — Relief from Double Taxation	119
17	95	Foreign affiliates	123
18	96	Partnerships and their members	127
19	97	Contribution of property to partnership	131
20	98	Disposition of partnership property	131
21	104	Trusts and their beneficiaries	132
22	107	Disposition by taxpayer of capital interest	135
23	107.4	Qualifying disposition	135
24	108	Trusts - definitions	136
25	113	Deduction in respect of dividend received from foreign affiliate	137
26	114	Part-year residents	137
27	122	Tax payable by <i>Inter vivos</i> trust	137
28	126	Foreign tax credit	138
29	128.1	Immigration	138
30	149	Exempt corporations	139

Clause in Legis- lation	Section of the Income Tax Act	Topic	Page
31+32	152+160	Assessment and Reassessment	139
33+34	162+163	Penalties	140-141
35	215	Withholding and remittance of tax	142
36	216	Rents and timber royalties — optional method of payment	142
37	233.2	Foreign reporting requirements	143
38	233.3	Returns in respect of foreign property	146
39	233.4	Returns respecting foreign affiliates	147
40	233.5	Due diligence exception	148
41	248	Definitions and certain arrangements under civil law	149
42	S.C. 2001 c.17	<i>Inter vivos</i> transfer of property by an individual	153
43	S.C. 2001 c.17	Disposition by taxpayer of capital interest	154

Part 1

Income Tax Act

1. (1) Paragraph 12(1)(k) of the *Income Tax Act* is replaced by the following:

Foreign
corporations, trusts
and investment
entities

5

(k) any amount required by subdivision i to be included in computing the taxpayer's income for the year;

10

(2) Subsection (1) applies to taxation years that begin after 2002.

2. (1) The definition "controlled foreign affiliate" in subsection 17(15) of the Act is replaced by the following:

"controlled foreign
affiliate"
« société étrangère
affiliée contrôlée »

15

"controlled foreign affiliate" has the meaning that would be assigned by the definition "controlled foreign affiliate" in subsection 95(1) if this Act were read without reference to paragraph 94.1(2)(h) and if paragraphs (d) and (e) of that definition were read as follows:

"(d) one or more persons resident in Canada with whom the taxpayer does not deal at arm's length, or

(e) the taxpayer and one or more persons resident in Canada with whom the taxpayer does not deal at arm's length;"

25

(2) Subsection (1) applies after 2002.

3. (1) Paragraph 39(1)(a) of the Act is amended by adding the following after subparagraph (ii.2):

(ii.3) a property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the year,

(2) Subsection (1) applies to dispositions that occur after 2002.

30

4. (1) Paragraph 51(1)(a) of the French version of the Act is replaced by the following:

a) sauf pour l'application du paragraphe 20(21) et de l'alinéa 94(2)m), l'échange est réputé ne pas constituer une disposition du bien convertible;

5

(2) Paragraph 51(1)(c) of the English version of the Act is replaced by the following:

(c) except for the purposes of subsection 20(21) and paragraph 94(2)(m), the exchange shall be deemed not to be a disposition of the convertible property,

10

(3) Subsection 51(4) of the Act is replaced by the following:

Application

(4) Subsections (1) and (2) do not apply to

(a) any exchange to which subsection 85(1) or (2) or section 86 applies; and

15

(b) any exchange of property if that property is, immediately before the exchange, a specified participating interest.

(4) Subsections (1) and (2) apply to taxation years that begin after 2002. Subsections (1) and (2) also apply to

(a) taxation years of a taxpayer that begin after 2000 if a trust, to which the taxpayer, directly or indirectly, transferred or loaned property in 2001 (or would have so transferred property if section 94 of the Act, as enacted by subsection 15(1) of this Act, applied in 2001), makes a valid election under paragraph 15(2)(a) of this Act; and

25

(b) taxation years of a taxpayer that begin after 2001 if a trust, to which the taxpayer, directly or indirectly, transferred or loaned property in 2002 (or would have so transferred property if section 94 of the Act, as enacted by subsection 15(1) of this Act, applied in 2002), makes a valid election under paragraph 15(2)(a) or (b) of this Act.

30

(5) Subsection (3) applies to exchanges that occur in taxation years that begin after 2002.

5. (1) Subsection 52(1) of the Act is replaced by the following:

**Cost of certain
property the value
of which included in
income**

5

(1) In applying this subdivision, an amount shall be added in computing the cost at any time to a taxpayer of a property if

(a) the taxpayer acquired the property after 1971,

10

(b) the amount was not at or before that time otherwise added to the cost or included in computing the adjusted cost base to the taxpayer of the property,

(c) the property is not an annuity contract, a right as a beneficiary under a trust to enforce payment of an amount by the trust to the taxpayer, property acquired in circumstances to which subsection (2) or (3) applies, or property acquired from a trust in satisfaction of all or part of the taxpayer's capital interest in the trust, and

(d) an amount in respect of the property's value was

(i) included, otherwise than under section 7 or subsection 94.2(4), in computing

(A) the taxpayer's taxable income or taxable income earned in Canada, as the case may be, for a taxation year during which the taxpayer was non-resident, or

(B) the taxpayer's income for a taxation year throughout which the taxpayer was resident in Canada, or

(ii) for the purpose of computing the tax payable under Part XIII by the taxpayer, included in an amount that was paid or credited to the taxpayer.

(2) Subsection (1) applies to taxation years that begin after 2002.

6. (1) Paragraph 53(1)(d.1) of the Act is replaced by the following:

(d.1) any amount required by paragraph 94(5)(a) (as that paragraph read in its application to taxation years that began before 2003) to be

added in computing the adjusted cost base to the taxpayer of the property;

(2) Paragraph 53(1)(m) of the Act is replaced by the following:

(m) any amount included in respect of the property

(i) in computing the foreign accrual property income of the taxpayer because of the description of C in the definition “foreign accrual property income” in subsection 95(1) (as that definition read for taxation years that began before 2003) for a taxation year of the taxpayer that began both before that time and before 2003,

(ii) under subsection 94.1(1) (as that subsection read in its application to taxation years that began before 2003) in computing the taxpayer’s income for a taxation year that began both before that time and before 2003, or

(iii) under subsection 94.1(4) in computing the taxpayer’s income for a taxation year that began before that time;

(m.1) any amount required by subsection 94.2(12) or 94.3(5) to be added at or before that time in computing the adjusted cost base to the taxpayer of the property;

(3) Paragraph 53(2)(b.1) of the Act is replaced by the following:

(b.1) any amount required by paragraph 94(5)(b) (as that paragraph read in its application to taxation years that began before 2003) to be deducted in computing the adjusted cost base to the taxpayer of the property;

(4) Subsection 53(2) of the Act is amended by striking out the word “and” at the end of paragraph (u), by adding the word “and” at the end of paragraph (v) and by adding the following after paragraph (v):

(w) any amount required by subsection 94.2(12), 94.3(5) or 94.4(2) or (4) to be deducted at or before that time in computing the adjusted cost base to the taxpayer of the property.

(5) Subsections (1) to (4) apply to taxation years that begin after 2002. Subsections (1) and (3) also apply to

(a) taxation years of a taxpayer that begin after 2000 if a trust, in which the taxpayer had a capital interest at any time in 2001, makes a valid election under paragraph 15(2)(a) of this Act; and

(b) taxation years of a taxpayer that begin after 2001 if a trust, in which the taxpayer had a capital interest at any time in 2002, makes a valid election under paragraph 15(2)(a) or (b) of this Act.

7. (1) Subsection 70(3.1) of the Act is replaced by the following:

Exception

5

(3.1) In this section, “rights or things” in respect of an individual do not include

(a) an interest in a life insurance policy (other than an annuity contract the payment for which was deductible in computing the individual’s income under paragraph 60(1) or was made in 10 circumstances in which subsection 146(21) applied),

(b) eligible capital property,

(c) land included in the inventory of a business,

(d) a Canadian resource property,

(e) a foreign resource property, or

15

(f) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the individual for the individual’s taxation year in which the individual dies.

(2) Subsection 70(5.2) of the Act is replaced by the following:

**Resource property,
land inventory and
property subject to
94.2(3) of deceased**

20

(5.2) If in a taxation year a taxpayer dies,

(a) the taxpayer is deemed

25

(i) to have disposed, at the time that is immediately before the taxpayer’s death, of each

(A) Canadian resource property of the taxpayer,

(B) foreign resource property of the taxpayer,

(C) property that was land included in the inventory of a 30 business of the taxpayer, and

(D) property in respect of which subsection 94.2(3) applies (and subsection 94.2(20) does not apply) to the taxpayer for the taxation year, and

(ii) subject to paragraph (c), to have received at that time proceeds of disposition for each such property equal to its fair market value at that time; 5

(b) any person who, as a consequence of the taxpayer's death, acquires a property that is deemed by paragraph (a) to have been disposed of by the taxpayer is, subject to paragraph (c), deemed to have acquired the property at the time of the death at a cost equal to its fair market value at the time that is immediately before the death; and 10

(c) where the taxpayer was resident in Canada at the time that is immediately before the taxpayer's death, a particular property described in clause (a)(i)(A), (B) or (C) is, on or after the death and as a consequence of the death, transferred to a spouse or common-law partner of the taxpayer described in paragraph (6)(a) or a trust described in paragraph (6)(b), and it can be shown within the period that ends 36 months after the death (or, where written application has been made to the Minister by the taxpayer's legal representative within that period, within any longer period that the Minister considers reasonable in the circumstances) that the particular property has, within that period, vested indefeasibly in the spouse, common-law partner or trust, as the case may be, 15 20

(i) the taxpayer is deemed to have received, at the time that is immediately before the taxpayer's death, proceeds of disposition of the particular property equal to 25

(A) where the particular property is Canadian resource property of the taxpayer or foreign resource property of the taxpayer, the amount specified by the taxpayer's legal representative in the taxpayer's return of income filed under paragraph 150(1)(b), not exceeding its fair market value at that time, and 30

(B) where the particular property was land included in the inventory of a business of the taxpayer, its cost amount to the taxpayer at that time, and 35

(ii) the spouse, common-law partner or trust, as the case may be, is deemed to have acquired at the time of the death the particular property at a cost equal to the amount determined under subparagraph (i) in respect of the disposition of it under paragraph (a). 40

(3) Subsections (1) and (2) apply to taxation years that begin after 2002.

8. (1) The portion of subsection 73(1) of the Act before paragraph (a) is replaced by the following:

Inter vivos transfers
by individuals

5

73. (1) For the purposes of this Part, where at any time any particular capital property (other than a specified participating interest) of an individual (other than a trust) has been transferred in circumstances to which subsection (1.01) applies and both the individual and the transferee are resident in Canada at that time, unless the individual elects in the individual's return of income under this Part for the taxation year in which the property was transferred that the provisions of this subsection not apply, the particular property is deemed

(2) Subsection (1) applies to transfers that occur in taxation years that begin after 2002.

9. (1) The portion of subsection 75(2) of the Act after paragraph (b) is replaced by the following:

any income or loss from the property or from property substituted for the property, and any taxable capital gain or allowable capital loss from the disposition of the property or of property substituted for the property, is, during the existence of the person while the person is resident in Canada (other than while the person is resident in Canada solely because of subsection 94(3)), deemed to be income or a loss, as the case may be, or a taxable capital gain or allowable capital loss, as the case may be, of the person.

(2) Subsection 75(3) of the Act is amended by striking out the word "or" at the end of paragraph (c.1) and by adding the following after paragraph (c.1):

(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1)) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or

35

(3) Subsection (1) applies to taxation years that begin after 2000.

(4) Subsection (2) applies to trust taxation years that begin after 2000 except that, for trust taxation years that begin in 2001 or 2002

paragraph 75(3)(c.2) of the Act, as enacted by subsection (2), shall be read as follows:

(c.2) by a trust that is non-resident, for the purpose of computing its income for the year, because a contributor (as defined by subsection 94(1) as it reads in its application to taxation years that begin after 2002) to the trust is an individual (other than a trust) who is, at the end of the year, resident in Canada and has, at the end of the year, been resident in Canada for a period of, or for periods the total of which is, not more than 60 months; or

10. (1) Subsection 85(1.11) of the Act is replaced by the following:

Exception

(1.11) Notwithstanding subsection (1.1), the following property is not an eligible property of a taxpayer in respect of a disposition of the property in a taxation year by the taxpayer to a corporation:

(a) a foreign resource property, or an interest in a partnership that derives all or part of its value from one or more foreign resource properties, if

(i) the taxpayer and the corporation do not deal with each other at arm's length, and

(ii) it is reasonable to conclude that one of the purposes of the disposition, or a series of transactions or events of which the disposition is a part, is to increase the extent to which any person may claim a deduction under section 126; and

(b) a specified participating interest.

(2) Subsection (1) applies to taxation years that begin after 2002.

11. (1) Subsection 85.1(4) of the Act is replaced by the following:

Exception

(4) Subsection (3) does not apply in respect of a disposition at any time by a taxpayer of property that is

(a) a share of the capital stock of a foreign affiliate, all or substantially all of the property of which at that time was excluded property (within the meaning assigned by subsection 95(1)), to another foreign affiliate of the taxpayer where the disposition is part of a series of transactions or events for the purpose of disposing of the share to a person who, immediately after the series of transactions

or events, was a person (other than a foreign affiliate of the taxpayer) with whom the taxpayer was dealing at arm's length; or

(b) a specified participating interest.

(2) Subsection 85.1(6) of the Act is amended by striking out the word “or” at the end of paragraph (d), by adding the word “or” at the end of paragraph (e), and by adding the following after paragraph (e):

(f) the exchanged foreign shares are, immediately before the exchange, specified participating interest.

(3) Subsections (1) and (2) apply to dispositions and exchanges that occur in taxation years that begin after 2002.

12. (1) Subsection 86(3) of the Act is replaced by the following:

Application

(4) Subsections (1) and (2) do not apply

(a) to any disposition to which subsection 85(1) or (2) applies; and

(b) to any disposition of property that is, immediately before the disposition, a specified participating interest.

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

13. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (j.94):

Non-resident trusts and foreign investment entities

(j.95) for the purposes of sections 94 to 94.4, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) applies to taxation years that begin after 2000.

14. (1) Subsection 91(1) of the Act is replaced by the following:

**Amounts to be
included in respect
of share of foreign
affiliate**

91. (1) In computing the income for a taxation year of a taxpayer 5
resident in Canada, there shall be included, in respect of each share
owned by the taxpayer of the capital stock of a controlled foreign
affiliate of the taxpayer, as income from the share, the percentage of the
foreign accrual property income of any controlled foreign affiliate of the 10
taxpayer, for each taxation year of the affiliate that ends in the taxation
year of the taxpayer, equal to the amount that would be that share's
participating percentage in respect of the affiliate, determined at the end
of each such taxation year of the affiliate if paragraph (a) of the
definition "equity percentage" in subsection 95(4) did not take into 15
account each share that would be subject to subsection 94.2(9) in respect
of the taxpayer for the year if the taxpayer held the share throughout the
year.

**(2) Subparagraph 91(4)(a)(ii) of the Act is replaced by the
following:**

(ii) the taxpayer's relevant tax factor for the year, and 20

**(3) Subsection (1) applies to taxation years that begin after
2002.**

**(4) Subsection (2) applies to the 2002 and subsequent taxation
years.**

15. (1) Section 94 of the Act is replaced by the following: 25

Treatment of Trusts with Canadian Contributors

Definitions

94. (1) The following definitions apply in this section.

**"arm's length
transfer" 30**

« *transfert sans lien
de dépendance* »

"arm's length transfer", at any time by an entity (referred to in this 35
definition as the "transferor") means a transfer or loan (which transfer
or loan is referred to in this definition as the "transfer") of property
(other than a restricted property) that is made at that time (referred to
in this definition as the "transfer time") by the transferor to a

particular entity (referred to in this definition as the “recipient”) where

(a) it is reasonable to conclude that none of the reasons (determined by reference to all the circumstances including the terms of a trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the transfer is the acquisition at any time by any entity of an interest as a beneficiary under a non-resident trust; and

(b) the transfer

(i) is a payment of interest, of a dividend, of rent, of a royalty or of any other return on investment, or any substitute for such a return on investment, in respect of a particular property held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), or the transfer is a transfer described in paragraph (2)(g) that is an acquisition by the recipient of

(I) a unit of a mutual fund trust or of a trust that would be a mutual fund trust if section 4801 of the Regulations were read without reference to paragraph 4801(b),

(II) a share of the capital stock of a mutual fund corporation, or

(III) a particular share of the capital stock of a corporation (other than a closely-held corporation) which particular share is identical to a share that is, at the transfer time, of a class that is listed on a prescribed stock exchange, and

(B) the fair market value of the property, at the transfer time, is not more than the amount that the transferor would have transferred at the transfer time in respect of the particular property to the recipient if the transferor dealt at arm’s length with the recipient,

(ii) is a payment made by a corporation on a reduction of the paid-up capital in respect of shares of a class of its capital stock held by the recipient, if

(A) the transfer is not a transfer described in paragraph (2)(g), and

(B) the amount of the payment is not more than the lesser of the amount of the reduction and the consideration for which the shares were issued,

(iii) is a refund in whole or in part of a gift that the recipient made to the transferor, if the recipient is a trust and the transferor is at the transfer time a specified charity in respect of the recipient, 5

(iv) is a transfer 10

(A) in exchange for which, the recipient transfers or loans property (other than a restricted property) to the transferor, or becomes obligated to transfer or loan property (other than a restricted property), and 15

(B) for which it is reasonable to conclude

(I) having regard only to the transfer and the exchange that the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and 20

(II) that the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient, 25

(v) is made in satisfaction of an obligation that arose because of a transfer to which subparagraph (iv) applied, if 30

(A) the transfer is not a transfer described in paragraph (2)(g),

(B) the transferor would have been willing to make the transfer if the transferor dealt at arm's length with the recipient, and 35

(C) the terms and conditions, and circumstances, under which the transfer was made would have been acceptable to the transferor if the transferor dealt at arm's length with the recipient, 40

(vi) is a payment of an amount owing by the transferor under a written agreement the terms and conditions of which, when entered into, were terms and conditions that, having regard only to the amount owing and the agreement, persons dealing 45

at arm's length would have entered into, if the transfer is not a transfer described in paragraph (2)(g),

(vii) is a payment made before 2002 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor, or

(viii) is a payment made after 2001 to a trust (or to a corporation controlled by the trust or to a partnership of which the trust is a majority interest partner, together referred to in this subparagraph as "the specified person or partnership") in repayment of or otherwise in respect of a particular loan made by the trust (or by the specified person or partnership, as the case may be) to the transferor and either

(A) they would have been willing to enter into the particular loan if they dealt at arm's length with each other and the payment is not a transfer described in paragraph (2)(g), or

(B) the payment is made before 2005 in accordance with fixed repayment terms agreed to before June 23, 2000.

"beneficiary"

« *bénéficiaire* »

"beneficiary", under a trust, includes

(a) an entity that is beneficially interested in the trust; and

(b) an entity that would be beneficially interested in the trust if

(i) the entity were a person, and

(ii) the reference in subparagraph 248(25)(b)(ii) to

(A) the expression "any arrangement in respect of the particular trust" were read as a reference to the expression "any arrangement (including the terms or conditions of a share, or any arrangement in respect of a share, of the capital stock of a corporation that is beneficially interested in the particular trust) in respect of the particular trust", and

(B) the expression “the particular person or partnership might” were read as a reference to the expression “the particular person or partnership becomes (or could become on the exercise of any discretion by any entity), directly or indirectly, entitled to any amount derived, directly or indirectly, from the income or capital of the particular trust or might”.

“closely-held corporation”

« *société à peu d'actionnaires* »

“closely-held corporation”, at any time, means a corporation other than a corporation in respect of which

(a) there are one or more classes of shares of its capital stock that are not a specified class within the meaning assigned by subsection 256(1.1); and

(b) it is reasonable conclude that at that time

(i) the shares of those classes (other than such a specified class) are held by at least 150 entities each of whom holds shares that have a total fair market value of at least \$500, and

(ii) the total number of issued and outstanding shares of a class (other than such a specified class) held by a particular entity or by any other entity with whom the particular entity does not deal at arm's length is not more than 10% of the total number of the issued and outstanding shares of that class.

“connected contributor”

« *contribuant rattaché* »

“connected contributor”, to a trust at a particular time, means an entity (including an entity that has ceased to exist) that is a contributor to the trust at the particular time, other than an entity

(a) that is an individual (other than a trust) who was, at or before the particular time, resident in Canada for a period of, or periods the total of which is, not more than 60 months (but not including an individual who, before the particular time, was never non-resident); or

(b) whose only contributions to the trust were made at a non-resident time of the entity.

“contribution”

« *apport* »

5

“contribution”, to a trust by a particular entity, means

(a) a transfer or loan (other than an arm’s length transfer) of property to the trust by the particular entity; 10

(b) if a particular transfer or loan (other than an arm’s length transfer) of property is made by the particular entity as part of a series of transactions or events that includes another transfer or loan (other than an arm’s length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the particular transfer or loan; and 15

(c) if the particular entity becomes obligated to make a particular transfer or loan (other than a transfer or loan that would, if it were made, be an arm’s length transfer) of property as part of a series of transactions or events that includes another transfer or loan (other than an arm’s length transfer) of property to the trust by another entity, that other transfer or loan to the extent that it can reasonably be considered to have been made in respect of the obligation. 20 25

“contributor”

« *contribuant* »

30

“contributor”, to a trust at any time, means an entity (including an entity that has ceased to exist) that, at or before that time, has made a contribution to the trust. 35

“eligible non-resident trust”

« *fiducie non-résidente admissible* »

40

“eligible non-resident trust”, at any time, means a trust other than

(a) a trust created or maintained for charitable purposes; 45

(b) a trust governed by an employee benefit plan;

(c) a trust described in paragraph (a.1) of the definition “trust” in subsection 108(1);

(d) a trust governed by a salary deferral arrangement;

(e) a trust operated for the purpose of administering or providing superannuation, pension, retirement or employee benefits;

(f) a trust that at or before that time was a personal trust; or

(g) a trust that has elected in writing filed with the Minister, on or before the trust’s filing-due date for the particular taxation year of the trust that includes that time (or for an earlier taxation year that ended before that time), that the definition “exempt foreign trust” not apply to it for the particular taxation year (or for the earlier taxation year) and for all of its subsequent taxation years.

“entity”

« *entité* »

“entity” includes an association, a corporation, a fund, a natural person, a joint venture, an organization, a partnership, a syndicate and a trust.

“exempt foreign trust”

« *fiducie étrangère exempte* »

“exempt foreign trust”, at a particular time, means

(a) a non-resident trust, if

(i) each beneficiary under the trust at the particular time is

(A) an individual who, at the time that the trust was created, was, because of mental or physical infirmity, dependent on an individual who is a contributor to the trust or on an individual related to such a contributor (which beneficiary is referred to in this paragraph as an “infirm beneficiary”), or

(B) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust’s income or capital,

(ii) at the particular time there is at least one infirm beneficiary who suffers from a mental or physical infirmity that causes the beneficiary to be dependent on a person,

(iii) each infirm beneficiary is non-resident at any time in the trust's taxation year that includes the particular time, and

(iv) each contribution to the trust made at or before the particular time can reasonably be considered to have been, at the time that the contribution was made, made to provide for the maintenance of an infirm beneficiary during the expected period of the beneficiary's infirmity;

(b) a non-resident trust, if

(i) the trust was created after the breakdown of a marriage or common-law partnership of two particular individuals to provide for the maintenance of a beneficiary under the trust who is a child of one of those particular individuals (which beneficiary is referred to in this paragraph as a "child beneficiary"),

(ii) each beneficiary under the trust at the particular time is

(A) a child beneficiary under 21 years of age at the particular time,

(B) a child beneficiary under 31 years of age at the particular time who is enrolled at any time in the trust's taxation year that includes the particular time at an educational institution that is described in clause (v)(A) or (B), or

(C) a person who is entitled, only after the particular time, to receive or otherwise obtain the use of any of the trust's income or capital,

(iii) each child beneficiary is non-resident at a time in the trust's taxation year that includes the particular time,

(iv) each contributor to the trust at the particular time was one of those particular individuals or a person related to one of those particular individuals, and

(v) each contribution to the trust, at the time that the contribution was made, was made to provide for the maintenance of a child beneficiary, while the child was either under 21 years of age, or was under 31 years of age and enrolled at an educational institution located outside Canada that is

(A) a university, college or other educational institution that provides courses at a post-secondary school level, or

(B) an educational institution that provides courses designed to furnish a person with skills for, or improve a person's skills in, an occupation;

(c) a non-resident trust, if

(i) at the particular time, the trust is an agency of the United Nations,

(ii) at the particular time, the trust owns and administers a university described in paragraph (f) of the definition "total charitable gifts" in subsection 118.1(1), or

(iii) at any time in the trust's taxation year that includes the particular time or at any time in the preceding calendar year, Her Majesty in right of Canada has made a gift to the trust;

(d) a non-resident trust

(i) that, throughout the particular period that began at the time it was created and ends at the particular time, would be non-resident if this Act were read without reference to subsection (1) as that subsection read in its application to taxation years that began before 2003,

(ii) that was created exclusively for charitable purposes and has been operated, throughout the particular period, exclusively for charitable purposes,

(iii) if the particular time is more than 24 months after the day on which the trust was created, in respect of which, there is at the particular time a group of at least 20 persons (other than trusts) each of whom at the particular time

(A) is a contributor to the trust,

(B) exists, and

(C) deals with each of the others in the group at arm's length,

(iv) the income of which (determined in accordance with the laws described in subparagraph (v)) for each of its taxation years that ends at or before the particular time would, if the income were not distributed and the laws described in

subparagraph (v) did not apply, be subject to an income or profits tax in the country in which it was resident in each of those taxation years, and

(v) that was, for each of those taxation years, exempt under the laws of the country in which it was resident from the payment of income or profits tax to the government of that country in recognition of the charitable purposes for which the trust is operated;

(e) a non-resident trust that, throughout the trust's taxation year that includes the particular time, is a trust governed by an employees profit sharing plan, a retirement compensation arrangement or a foreign retirement arrangement;

(f) a non-resident trust, if throughout the trust's taxation year that includes the particular time

(i) the trust is a trust governed by an employee benefit plan or is a trust (referred to in this paragraph as the "specified trust") described in paragraph (a.1) of the definition "trust" in subsection 108(1),

(ii) the plan or the specified trust is maintained primarily for the benefit of non-resident individuals,

(iii) the trust holds no restricted property, and

(iv) the plan or the specified trust provides no benefits, other than benefits in respect of

(A) services rendered to an employer by an employee of the employer, which employee was non-resident throughout the period during which the services were rendered,

(B) services rendered to an employer by an employee of the employer, other than services that were primarily

(I) rendered in Canada,

(II) rendered in connection with a business carried on by the employer in Canada, or

(III) a combination of services described in subclauses (I) and (II),

(C) services rendered to an employer by an employee, of the employer, in a particular calendar month where

(I) the employee was resident in Canada throughout no more than 60 of the 72 calendar months ending with the particular month, and

(II) the employee became a member of, or a beneficiary under, the plan or the specified trust (or a similar plan or specified trust for which the plan or the specified trust was substituted) before the end of the calendar month following the month in which the employee became resident in Canada, or

(D) any combination of services described by clauses (A) to (C);

(g) a non-resident trust that, throughout the particular period that began at the time it was created and ends at the particular time,

(i) has been operated exclusively for the purpose of administering or providing superannuation, pension, retirement or employee benefits,

(ii) has

(A) been maintained for the benefit of persons all or substantially all of whom are non-resident individuals, or

(B) been maintained for the benefit of persons

(I) the majority of whom are non-resident individuals, and

(II) all or substantially all of whom are employed by one corporation or by two or more corporations each of which is related to each other, and

(iii) has

(A) been resident in a country (other than Canada) the laws of which impose an income or profits tax, and been exempt, under the laws of that country, from the payment of income tax and profits tax to the government of that country in recognition of the purposes for which the trust is operated, or

(B) held cash or shares of the capital stock of one or more corporations referred to in subclause (ii)(B)(II) the value of which at any time in the particular period represents all or substantially all of the value of its property at that time,

held no restricted property, and been governed by terms that provide, in respect of each individual who is a beneficiary under the trust and was resident in Canada at any time while employed by one of those corporations, for a transfer of property to be made by the trust to the individual in satisfaction of a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the individual as a beneficiary under the trust only on or after the satisfaction of the conditions, if any, attached to that right;

(h) an eligible non-resident trust

(i) under which the interest of each beneficiary (in this subparagraph, determined without reference to subsection 248(25)) under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if at the particular time

(A) there are at least 150 beneficiaries each of whom holds a specified fixed interest in the trust with a fair market value of at least \$500, and

(B) where in respect of a class of interests as a beneficiary under the trust, the total fair market value of interests of that class held by a resident contributor or by any other entity with whom the resident contributor does not deal at arm's length is more than 10% of the total fair market value of interests of that class, it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that that resident contributor is a specified contributor to the trust, or

(ii) under which the interest of each beneficiary under the trust is, at all times that the interest exists during the trust's taxation year that includes the particular time, a specified fixed interest of the beneficiary in the trust, if in respect of the trust

(A) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and

(B) it is reasonable to conclude (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) that each resident contributor to the trust at the particular time is a specified contributor to the trust at the particular time; or 5

(i) a trust that is, at the particular time, a prescribed trust or included in a prescribed class of trusts. 10

“exempt service”

« *service exempté* »

“exempt service” means a service rendered at any time by an entity 15 (referred to in this definition as the “service provider”) to, for or on behalf of, another entity (referred to in this definition as a “recipient”) if

(a) the recipient is at that time a trust and the service relates to the 20 administration of the trust; or

(b) the following conditions apply in respect of the service, namely

(i) the service is rendered in the service provider’s capacity at that time as an employee or agent of the recipient, 25

(ii) in exchange for the service the recipient transfers or loans property, or becomes obligated to transfer or loan property, and 30

(iii) it is reasonable to conclude

(A) having regard only to the service and the exchange that the service provider would have been willing to carry out 35 the service if the service provider had dealt at arm’s length with the recipient, and

(B) that the terms and conditions, and circumstances, under which the service was provided would have been acceptable 40 to the service provider if the service provider had dealt at arm’s length with the recipient.

“exempt taxpayer”

« *contribuable
exempté* »

45

“exempt taxpayer”, for a taxation year of the taxpayer, means

(a) a person whose taxable income for the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)); and

(b) a trust (other than a personal trust) if

5

(i) the only beneficiaries (in this paragraph, determined without reference to subsection 248(25)) under the trust are persons,

(ii) the interest of each beneficiary under the trust is, at all 10 times that the interest exists during the taxation year, a specified fixed interest of the beneficiary in the trust,

(iii) each beneficiary under the trust at any time in the taxation year is a person whose taxable income, for the period that 15 includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)), and

(iv) the trust is resident in Canada at the end of the taxation 20 year.

“non-resident time”

« *moment de non-résidence* »

25

“non-resident time”, of an entity in respect of a particular time, means a time (referred to in this definition as the “contribution time”) at which the entity made a contribution to a trust that is before the particular time and at which the entity was non-resident, where the 30 entity was non-resident or not in existence throughout the period that began 60 months before the contribution time (or, if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time) and ends at the earliest of

35

(a) the time that is 60 months after the contribution time,

(b) if the entity is an individual, the date of death of the individual, and

40

(c) the particular time.

“promoter”*« promoteur »*

“promoter” of a trust at any time, means an entity that on or before that time establishes, organizes or substantially reorganizes the undertakings of the trust. 5

“resident beneficiary”*« bénéficiaire**résident »*

10

“resident beneficiary”, at any time under a particular trust, means an entity (other than an entity that is at that time a specified charity, or a testamentary beneficiary, in respect of the particular trust) that is, at that time, a beneficiary under the particular trust where, at that time 15

(a) the entity is resident in Canada; and

20

(b) there is a connected contributor to the particular trust.

“resident contributor”*« contribuant**résident »*

25

“resident contributor”, to a particular trust at any time, means an entity that is, at that time, resident in Canada and a contributor to the particular trust, but does not include 30

(a) an individual (other than a trust) who has not, at that time, been resident in Canada for a period of, or periods the total of which is, more than 60 months (other than an individual who, before that time, was never non-resident); or 35

(b) an individual (other than a trust), if

(i) the particular trust is an inter vivos trust that was created before 1960 by a person who was non-resident when the trust was created, and 40

(ii) the individual has not, after 1959, made a contribution to the particular trust.

**“restricted
property”**

« *bien d'exception* »

“restricted property” means

5

(a) a particular share (or a particular right to acquire a share) of the capital stock of a particular closely-held corporation if the particular share (or the particular right), or a property for which the particular share (or the particular right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property;

15

(b) an indebtedness (or a right to acquire an indebtedness) owing by another entity if

(i) the other entity is a closely-held corporation,

20

(ii) the indebtedness (or the right), or a property for which the indebtedness (or the right) was substituted, was at any time acquired as part of a transaction or series of transactions or events under which a specified share of the capital stock of a closely-held corporation was acquired by any entity in exchange for, as consideration for, or upon conversion of, any property, and

25

(iii) the amount of any payment (under a right to receive, in any manner whatever and from any entity, amounts in respect of the indebtedness), or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties of the other entity (or an entity with which the other entity does not deal at arm's length):

35

(A) the fair market value of the property, production from the property or use of the property,

40

(B) gains or profits from the disposition of the property,

(C) income from the property, profits from the property, revenue from the property or cash flow from the property, or

45

(D) any other criterion similar to a criterion referred to in any of clauses (A) to (C); and

(c) any property the fair market value of which is derived in whole or in part, directly or indirectly, from a particular share, an indebtedness or a right described in paragraph (a) or (b).

“specified charity”

« *organisme de
bienfaisance
déterminé* »

5

“specified charity”, in respect of a trust at any particular time, is any 10
person (referred to in this definition as the “charity”) that at the
particular time is a person described in any of paragraphs (a) to (e)
and (g.1) of the definition “total charitable gifts” in subsection
118.1(1) other than

15

(a) a charity that does not, at the particular time, deal at arm’s
length with a specified entity in respect of the trust, and

(b) a charity that did not, at any specified prior time, deal at arm’s
length with a specified entity in respect of the trust,

20

where

(c) “specified prior time” in respect of a charity means any time,
before the particular time, at which

25

(i) an amount was payable to the charity as a beneficiary under
the trust,

(ii) an amount was received by the charity on the disposition 30
of all or part of its interest as a beneficiary under the trust, or

(iii) a benefit was received or enjoyed by the charity from or
under the trust, and

35

(d) “specified entity” in respect of a trust at any time means

(i) an entity that is at that time

(A) a beneficiary under the trust,

40

(B) a contributor to the trust,

(C) a person related to a contributor to the trust,

45

(D) a trustee of the trust,

(E) an entity that could reasonably be considered to have influence over the operation of the trust or the enforcement of its terms, or

(F) an entity that could reasonably be considered to have influence over the selection or appointment of an entity referred to in any of clauses (A), (D) and (E), or

(ii) any group of entities at least one of which is described in subparagraph (i). 10

“specified contributor”

« *contribuant déterminé* » 15

“specified contributor”, to a trust at a particular time in a taxation year of a particular entity, means the particular entity, if

(a) the particular entity is, at the particular time, both a contributor to the trust and a beneficiary under the trust; 20

(b) at all times, after February 16, 1999 and on or before the particular time, when it is a beneficiary under the trust, the particular entity’s interest as a beneficiary under the trust is or would, if the definition “specified fixed interest” applied at those times, have been a specified fixed interest of the particular entity in the trust; 25

(c) it is reasonable to conclude that, at no time that is after February 16, 1999 and on or before the particular time, has 30

(i) the particular entity made a contribution of restricted property to the trust, or

(ii) another entity made a contribution of restricted property to the trust when that other entity was not dealing at arm’s length with the particular entity; and 35

(d) where the particular entity is, at any time that is after February 16, 1999 and on or before the particular time, a beneficiary under the trust 40

(i) either

(A) the particular entity identifies the trust in prescribed form filed with the Minister on or before the particular 45

entity's filing-due date for that taxation year (or a later date that is acceptable to the Minister), or

(B) a prescribed form and a copy of the terms of the trust that apply at the particular time have been filed with the Minister by or on behalf of the trust on or before its filing due date for its taxation year that includes the particular time (or a later date that is acceptable to the Minister), and 5

(ii) unless the beneficiary is an exempt taxpayer for the taxation year, with respect to each particular contribution made after February 16, 1999 and on before the particular time by the particular entity to the trust, it is reasonable to conclude that 10

(A) no consideration was received (other than property received by the particular entity that is the particular entity's interest as a beneficiary under the trust), 15

(B) none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution is the acquisition at any time by any entity (other than the particular entity) of an interest as a beneficiary under the trust, and 20 25

(C) the fair market value of the particular contribution is equal to the fair market value, at the time of the particular contribution, of the particular entity's interest as a beneficiary under the trust acquired as a result of the particular contribution. 30

**“specified controlled
foreign affiliate”**
*« société étrangère
affiliée contrôlée
déterminée »*

35

“specified controlled foreign affiliate”, of a particular entity at any time, means an entity that would, at that time, be a controlled foreign affiliate of the particular entity if the particular entity were resident in Canada at that time. 40

**“specified fixed
interest”**

« *participation fixe
désignée* »

5

“specified fixed interest”, at any time of an entity in a trust, means a capital interest of the entity in the trust if

(a) the interest includes, at that time, a right of the entity as a beneficiary under the trust to receive, at or after that time and directly from the trust, income or capital of the trust; 10

(b) the interest was acquired, at or before that time, from the trust by any entity, in circumstances that are described by subparagraph (2)(g)(ii); 15

(c) no right of the entity as a beneficiary under the trust to income or capital of the trust may cease to be a right of the entity (or the entity’s legal representatives) otherwise than because of 20

(i) a gift of that interest made by the entity, or

(ii) a transaction or event under which the entity (or the entity’s legal representatives) is entitled to receive an amount equal to the fair market value, immediately before that cessation, of the right; and 25

(d) the trust was not at any time at or before that time a personal trust. 30

“specified party”

« *tiers déterminé* »

“specified party”, in respect of a particular entity at any time, means an entity that is at that time 35

(a) an individual who is a spouse or common-law partner of the particular entity;

(b) a specified controlled foreign affiliate of 40

(i) the particular entity, or

(ii) if the particular entity is an individual, a spouse or common-law partner of the individual; 45

(c) an entity for which it is reasonable to conclude that the benefit referred to in subparagraph (8)(a)(iii) was conferred

(i) in contemplation of the entity becoming after that time a specified controlled foreign affiliate of an entity referred to in subparagraph (b)(i) or (ii), or

(ii) to avoid or minimize a liability under this Part that arose, 5
or that would otherwise have arisen, because of the application of subsection (3) with respect to the particular entity; or

(d) a corporation in which the particular entity is a shareholder, if 10

(i) the corporation is on or before that time beneficially interested in a trust, and

(ii) the particular entity is a beneficiary under the trust solely because of the application of paragraph (b) of the definition 15
“beneficiary” in this subsection to the particular entity in respect of the corporation.

“specified property”

« *bien déterminé* » 20

“specified property” means

(a) a share of the capital stock of a corporation; 25

(b) an interest as a beneficiary under a trust;

(c) an interest in a partnership;

(d) an interest in any other entity; 30

(e) a right to acquire property described in any of paragraphs (a) to (d); and

(f) any other property deriving its value primarily from property 35
described in any of paragraphs (a) to (e).

“specified share”

« *action déterminée* » 40

“specified share” means a share of the capital stock of a corporation other than a share that is prescribed for the purpose of paragraph 110(1)(d).

“specified time”**« moment déterminé »**

“specified time”, in respect of a trust for a taxation year of the trust,
means

5

(a) if the trust exists at the end of the taxation year, the time that
is the end of that taxation year; and

(b) in any other case, the time in that taxation year that is
immediately before the time at which the trust ceases to exist.

**“testamentary
beneficiary”****« bénéficiaire****testamentaire »**

15

“testamentary beneficiary”, at any time in respect of a trust, means an
entity that is a beneficiary under the trust solely because of a right of
the beneficiary to receive or otherwise obtain the use of any of the
trust’s income or capital only on or after the death after that time of
an individual who, at that time, is alive and

20

(a) is a contributor to the trust;

25

(b) is related to a contributor to the trust; or

(c) would have been related to a contributor to the trust if every
individual who was alive before that time were alive at that time.

30

“trust”**« fiducie »**

“trust” includes, for greater certainty, a testamentary trust.

35

Rules of application

(2) In this section,

(a) an entity is deemed to have transferred, at any time, a property to
a trust if

40

(i) at that time it transfers or loans property (other than by way of
an arm’s length transfer or a transfer or loan to which paragraph
(c) applies) to another entity, and

45

(ii) because of that transfer or loan

(A) the fair market value of one or more properties held by the trust increases at that time, or

(B) a liability or potential liability of the trust decreases at that time;

5

(b) the fair market value at any time of a property deemed by paragraph (a) to be transferred at that time is deemed to be the amount of the absolute value of the increase or decrease, as the case may be, referred to in subparagraph (a)(ii) in respect of the property;

10

(c) an entity is deemed to have transferred, at any time, a property to a trust if

(i) at that time it transfers or loans property (other than by way of an arm's length transfer) to another entity, and

15

(ii) at or after that time, the trust holds property the fair market value of which is derived in whole or in part, directly or indirectly, from property held by the other entity;

20

(d) the fair market value at any time of a property deemed by paragraph (c) to be transferred at that time is deemed to be the fair market value of the property referred to in that paragraph that was actually transferred or loaned;

25

(e) if, at any time, a particular entity has given a guarantee on behalf of, or has provided any other financial assistance to, another entity,

(i) the particular entity is deemed to have transferred, at that time, property to that other entity, and

30

(ii) the property, if any, transferred to the particular entity from the other entity in exchange for the guarantee or other financial assistance is deemed to have been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;

35

(f) if, at any time after June 22, 2000, a particular entity renders any service (other than an exempt service) to, for or on behalf of, another entity,

40

(i) the particular entity is deemed to have transferred, at that time, property to that other entity, and

45

(ii) the property, if any, transferred to the particular entity from the other entity in exchange for the service is deemed to have

been transferred to the particular entity in exchange for the property deemed by subparagraph (i) to have been transferred;

(g) each of the following acquisitions of property by a particular entity is deemed to be a transfer of the property, at the time of the acquisition of the property, to the particular entity from the entity from which the property was acquired, namely the acquisition by the particular entity of 5

(i) a share of the capital stock of a corporation from the corporation, 10

(ii) an interest as a beneficiary under a trust (otherwise than as a consequence of a disposition of the interest by a beneficiary under the trust), 15

(iii) an interest in a partnership (otherwise than as a consequence of a disposition of the interest by a member of the partnership),

(iv) an interest in an entity that is not a corporation, partnership or trust (otherwise than as a consequence of a disposition of the interest by an entity having an interest in the entity), 20

(v) a debt owing by an entity from the entity, and 25

(vi) a right (granted after June 22, 2000 by the entity from which the right was acquired) to acquire or to be loaned property;

(h) the fair market value at any time of a property deemed by subparagraph (e)(i) or (f)(i) to have been transferred at that time is deemed to be the fair market value, at that time, of the assistance or service, as the case may be, to which the property relates; 30

(i) a particular entity that at any time becomes obligated to do an act that would, if done, constitute the transfer or loan of a property to another entity is deemed to have become obligated at that time to transfer or loan, as the case may be, property to that other entity; 35

(j) in applying at any time the definition “non-resident time”, if a trust acquires property of an individual as a consequence of the death of the individual, the individual is deemed to have transferred the property to the trust immediately before the individual’s death; 40

(k) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the “specified entity”) if 45

- (i) the particular entity transfers or loans property at that time to another entity,
 - (ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity, and 5
 - (iii) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize the liability, of any entity, under this Part that arose, or that would otherwise have arisen, because of the application of subsection (3); 10
- (l) a transfer or loan of property at any time is deemed to be made at that time jointly by a particular entity and a second entity (referred to in this paragraph as the “specified entity”) if 15
- (i) the particular entity transfers or loans property at that time to another entity,
 - (ii) the transfer or loan is made at the direction, or with the acquiescence, of the specified entity, 20
 - (iii) that time is not, or would not be, if the transfer or loan were a contribution of the specified entity, a non-resident time of the specified entity, and 25
 - (iv) either
 - (A) the particular entity is, at that time, an entity that is a controlled foreign affiliate of the specified entity, or would at that time be a controlled foreign affiliate of the specified entity 30 if the specified entity were at that time resident in Canada, or
 - (B) it is reasonable to conclude that the transfer or loan was made in contemplation of the particular entity becoming after that time a particular entity described in clause (A); 35
- (m) a particular entity is deemed to have transferred, at a particular time, a particular property or particular part of it, as the case may be, to a second entity if 40
- (i) the particular property is a share of the capital stock of a corporation held at the particular time by the particular entity, and as consideration for the disposition at or before the particular time of the share, the particular entity received at the particular time (or became entitled at the particular time to receive) from the 45 corporation a share of the capital stock of the corporation, or

(ii) the particular property (or property for which the particular property is substituted property) was acquired, before the particular time, from the second entity by any entity, in circumstances that are described by any of subparagraphs (g)(i) to (vi) (or would be so described if it applied at the time of that acquisition) and at the particular time, 5

(A) the terms or conditions of the particular property change,

(B) the second entity redeems, acquires or cancels the particular property or the particular part of it, 10

(C) where the particular property is a debt owing by the second entity, the debt or the particular part of it is settled or cancelled, or 15

(D) where the particular property is a right to acquire or to be loaned property, the particular entity exercises the right;

(n) a contribution made at any time by a particular trust to another trust is deemed to have been made at that time jointly by the particular trust and by each entity that is at that time a contributor to the particular trust; 20

(o) a contribution made at any time by a particular partnership to a trust is deemed to have been made at that time jointly by the particular partnership and by each entity that is at that time a member of the particular partnership (other than a member of the particular partnership where the liability of the member as a member of the particular partnership is limited by operation of any law governing the partnership arrangement); 30

(p) subject to paragraph (o) and subsection (9), the amount of a contribution to a trust at the time it was made is deemed to be the fair market value, at that time, of the property that was the subject of the contribution; 35

(q) an entity that at any time acquires a specified fixed interest in a trust (or a right, issued by the trust, to acquire a specified fixed interest in the trust) from another entity (other than the trust that issued the specified fixed interest) is deemed to have made at that time a contribution to the trust and the amount of the contribution is deemed to be equal to the fair market value at that time of the specified fixed interest or right, as the case may be; 40

(r) a particular entity that has acquired a specified fixed interest in a trust as a consequence of making a contribution to the trust (or that has made a contribution to the trust as a consequence of having 45

acquired a specified fixed interest in the trust or a right described in paragraph (q)) is, for the purpose of applying this section at any time after the time that the particular entity transfers the specified fixed interest or the right, as the case may be, to another entity (which transfer is referred to in this paragraph as the “sale”), deemed not to have made the contribution in respect of the specified fixed interest, or right, that is the subject of the sale where

(i) immediately before the sale, the particular entity would be a specified contributor to the trust if 10

(A) the definition “specified contributor” were read without reference to subparagraph (d)(i) of that definition,

(B) in applying paragraph (b) of that definition, a specified fixed interest included the right, and 15

(C) that definition applied immediately before the sale,

(ii) in exchange for the sale, the other entity transfers or loans, or becomes obligated to transfer or loan, property (which property is referred to in subparagraph (iii) as the “consideration”) to the particular entity, and 20

(iii) it is reasonable to conclude 25

(A) having regard only to the sale and the consideration that the particular entity would have been willing to make the sale if the particular entity dealt at arm’s length with the other entity, and 30

(B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the particular entity if the particular entity dealt at arm’s length with the other entity; 35

(s) a transfer to a trust by a particular entity is deemed not to be, at a particular time, a contribution to the trust if

(i) the particular entity has transferred, at or before the particular time and in the ordinary course of business of the particular entity, property to the trust, 40

(ii) the transfer is not an arm’s length transfer, but would be an arm’s length transfer if the definition “arm’s length transfer” were read without reference to paragraph (a), and subparagraphs (b)(i) to (iii) and (v) to (viii), of that definition, 45

(iii) it is reasonable to conclude that the particular entity was the only entity that acquired, in respect of the transfer, an interest as a beneficiary under the trust,

(iv) the particular entity was required, under the securities law of a country or of a political subdivision of the country in respect of the issuance by the trust of interests as a beneficiary under the trust, to acquire an interest because of the particular entity's status at the time of the transfer as a manager or promoter of the trust,

(v) at the particular time the trust is not an exempt foreign trust, but would be at that time an exempt foreign trust if it had not made an election under paragraph (h) of the definition "exempt foreign trust", and

(vi) the particular time is before the earliest of

(A) the first time at which the trust becomes an exempt foreign trust,

(B) the first time at which the particular entity ceases to be a manager or promoter of the trust, and

(C) the time that is 24 months after the first time at which the total fair market value of consideration received by the trust in exchange for interests as a beneficiary (other than the particular entity's interest referred to in subparagraph (iii)) under the trust is greater than \$500,000;

(i) a transfer, by a Canadian corporation of particular property, that is at a particular time a contribution by the Canadian corporation to a trust, is deemed not to be, after the particular time, a contribution by the Canadian corporation to the trust if

(i) either

(A) the trust acquired the particular property before the particular time from the Canadian corporation in circumstances described in subparagraph (2)(g)(i) or (v), or

(B) another entity acquired property before the particular time from the Canadian corporation in circumstances described in subparagraph (2)(g)(i) or (v) and because of that acquisition the Canadian corporation was deemed by paragraph (2)(c) to have transferred the particular property to the trust,

(ii) as a result of a transfer at the particular time by any entity (referred to in this paragraph as the "seller") to another entity

(referred to in this paragraph as the “purchaser”) the trust ceases to hold property that is shares of the capital stock of, or debt issued by, the Canadian corporation or that is property the fair market value of which is derived in whole or in part, directly or indirectly, from shares of the capital stock of, or debt issued by, the Canadian corporation, 5

(iii) the purchaser deals at arm’s length immediately before the particular time with the Canadian corporation, the trust and the seller, 10

(iv) in exchange for the sale, the purchaser transfers or becomes obligated to transfer property (which property is referred to in this paragraph as the “consideration”), to the seller, and 15

(v) it is reasonable to conclude

(A) having regard only to the sale and the consideration that the seller would have been willing to make the sale if the seller dealt at arm’s length with the purchaser, 20

(B) that the terms and conditions made or imposed in respect of the exchange are terms and conditions that would have been acceptable to the seller if the seller dealt at arm’s length with the purchaser, and 25

(C) that the value of the consideration is not, at or after the particular time, determined in whole or in part, directly or indirectly, by reference to shares of the capital stock of, or debt issued by, the Canadian corporation; and 30

(u) a transfer, before October 11, 2002, to a personal trust by an individual (other than a trust) of particular property is deemed not to be a contribution of the particular property by the individual to the trust if 35

(i) the individual identifies the trust in prescribed form filed with the Minister on or before the individual’s filing-due date for the individual’s 2003 taxation year (or a later date that is acceptable to the Minister), and 40

(ii) the Minister is satisfied that

(A) the individual (and any entity not dealing at any time at arm’s length with the individual) has never loaned or transferred, directly or indirectly, restricted property to the trust, 45

(B) in respect of each contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust, none of the reasons (determined by reference to all the circumstances including the terms of the trust, an intention, the laws of a country or the existence of an agreement, a memorandum, a letter of wishes or any other arrangement) for the contribution was to permit or facilitate, directly or indirectly, the conferral at any time of a benefit (for greater certainty, including an interest as a beneficiary under the trust) on 10

(I) the individual,

(II) a descendant of the individual, or

15

(III) any entity with whom the individual or descendant does not, at any time, deal at arm's length, and

(C) the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made before October 11, 2002 by the individual to the trust does not exceed the greater of 20

(I) 1% of the total of all amounts each of which is the amount of a contribution (determined without reference to this paragraph) made to the trust before October 11, 2002, and 25

(II) \$500.

30

Liabilities of non-resident trusts and others

(3) Where at a specified time in a particular taxation year of a trust (other than a trust that is, at that time, an exempt foreign trust) the trust is non-resident (determined without reference to this subsection) and, at that time, there is a resident contributor to the trust or a resident beneficiary under the trust, 35

40

(a) the trust is deemed to be resident in Canada throughout the particular taxation year for the purposes of

(i) section 2,

45

(ii) computing the trust's income for the particular taxation year,

- (iii) applying subsections 104(13.1) to (29) and 107(2.1) and (5), in respect of the trust and a beneficiary under the trust,
 - (iv) applying clause 53(2)(h)(i.1)(B), the definition “non-resident entity” in subsection 94.1(1), subsection 107(2.002) and section 115, in respect of a beneficiary under the trust,
 - (v) determining an obligation of the trust to file a return under section 233.3 or 233.4,
 - (vi) determining the rights and obligations of the trust under Divisions I and J,
 - (vii) determining the liability of the trust for tax under Part I, and under Part XIII on amounts paid or credited (in this paragraph having the meaning assigned by Part XIII) to the trust, and
 - (viii) determining the liability of a non-resident person for tax under Part XIII on amounts paid or credited by the trust to the non-resident person (other than amounts referred to in paragraph 104(7.01)(b) in respect of the trust for the taxation year that are paid or credited to the non-resident person);
- (b) in applying subsections 20(11) and (12) and section 126,
- (i) in determining the non-business income tax (as defined by subsection 126(7)) paid by the trust for the particular taxation year to the government of a country other than Canada no amount shall be included to the extent that it can reasonably be regarded as attributable to income from a source in Canada, and
 - (ii) if the trust elects, by notifying the Minister in writing in its return of income for the particular taxation year, to have this paragraph apply,
 - (A) the trust’s income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada) is deemed
 - (I) to be income of the trust from sources (other than a business carried on by the trust) in the particular country (other than Canada) in which the trust is resident (determined without reference to this subsection), and
 - (II) not to be from any other source, and

(B) in determining the income or profits tax paid by the trust for the particular taxation year to the government of the particular country there shall be included only the total of all amounts each of which is the amount of an income or profits tax that was paid by the trust for the particular taxation year to the government of a country (other than Canada) and that can reasonably be regarded as a tax paid on the trust's income for the particular taxation year (other than the portion of the income that is from sources inside Canada or that is from a source, outside Canada, that is a business carried on by the trust outside Canada);

(c) if the trust was non-resident throughout its taxation year (referred to in this paragraph as the "preceding year") immediately preceding the particular taxation year for the purpose of Part I or of computing its income for the preceding year, the trust is deemed to have

(i) immediately before the end of the preceding taxation year, disposed of each property (other than property described in any of subparagraphs 128.1(1)(b)(i) to (iv)) held by the trust at that time for proceeds of disposition equal to its fair market value at that time, and

(ii) at the beginning of the particular taxation year, acquired each of those properties so disposed of at a cost equal to its proceeds of disposition;

(d) each entity that at any time in the particular taxation year is a resident contributor to the trust or a resident beneficiary under the trust

(i) has jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the particular taxation year under Divisions I and J, and

(ii) is subject to Part XV in respect of those rights and obligations; and

(e) each entity that at any time in the particular taxation year is a beneficiary under the trust and was a person from whom an amount would be recoverable at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) in respect of the trust if the entity had received before 2003 amounts described under paragraphs (2)(a) or (b) in respect of the trust (as those paragraphs read in their application to taxation years that began before 2003)

(i) has, to the extent of the entity's recovery limit for the year, jointly and severally, or solidarily, with the trust and with each other such entity, the rights and obligations of the trust in respect of the taxation years, of the trust, that began before 2003 under Divisions I and J, and

5

(ii) is, to the extent of the entity's recovery limit for the year, subject to Part XV in respect of those rights and obligations.

Excluded provisions

10

(4) Paragraph (3)(a) does not apply to deem a trust to be resident in Canada for the purposes of

(a) the definitions "arm's length transfer", "exempt foreign trust" and "exempt taxpayer" in subsection (1);

15

(b) subsections 70(6) and 73(1), paragraph 107.4(1)(c) other than subparagraph (i) of it, subparagraph 128.1(1.1)(a)(ii), paragraph (a) of the definition "mutual fund trust" in subsection 132(6), and paragraph 248(3)(b);

20

(c) determining the liability of a person (other than the trust) that would arise under section 215;

25

(d) determining whether, in applying subsection 128.1(1), the trust becomes resident in Canada at a particular time;

(e) determining whether, in applying subsection 128.1(4), the trust ceases to be resident in Canada at a particular time; and

30

(f) determining the residency of the transferee in applying subparagraph (f)(ii) of the definition "disposition" in subsection 248(1).

35

Deemed cessation of residence

(5) A trust is deemed to cease to be resident in Canada at the earliest time at which there is neither a resident contributor to the trust nor a resident beneficiary under the trust in a period that would, if this Act were read without reference subsection 128.1(4), be a taxation year of the trust

40

(a) that immediately follows a taxation year of the trust throughout which it was resident in Canada;

45

(b) at the beginning of which there was a resident contributor to the trust, or a resident beneficiary under the trust; and

(c) at the end of which the trust is non-resident.

5

**Becoming or ceasing
to be an exempt
foreign trust**

(6) If at any time a trust becomes or ceases to be an exempt foreign trust (otherwise than because of becoming resident in Canada), 10

(a) its taxation year that would otherwise include that time is deemed to have ended immediately before that time and a new taxation year of the trust is deemed to begin at that time; and 15

(b) for the purpose of determining the trust's fiscal period after that time, the trust is deemed not to have established a fiscal period before that time. 20

**Limit to amount
recoverable**

(7) The maximum amount recoverable under the provisions referred to in paragraph (3)(d) at any particular time from an entity in respect of a trust (other than an entity that is deemed, by subsection (12) or (13), to be a contributor or a resident contributor to the trust) and a particular taxation year of the trust is the entity's recovery limit at the particular time in respect of the trust and the particular year if 25 30

30

(a) either

(i) the entity is liable under a provision referred to in paragraph (3)(d) in respect of the trust and the particular year solely because the entity was a resident beneficiary under the trust at a specified time in respect of the trust in the particular year, or 35

(ii) at a specified time in respect of the trust in the particular year, the total of all amounts each of which is the amount, at the time it was made, of a contribution to the trust made before the specified time by the entity, or by another entity not dealing at arm's length with the entity, is not more than the greater of 40

(A) \$10,000 and 45

(B) 10% of the total of all amounts each of which was the amount, at the time it was made, of a contribution made to the trust before the specified time;

(b) except where the total determined in subparagraph (a)(ii) in respect of the entity and all entities not dealing at arm's length with it is \$10,000 or less, the entity has filed on a timely basis under section 233.2 all information returns required to be filed by it before the particular time in respect of the trust (or on any later day that is acceptable to the Minister); and 5

(c) it is reasonable to conclude that for each transaction or event that occurred before the end of the particular year at the direction of, or with the acquiescence of, the entity 10

(i) none of the purposes of the transaction or event was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust, and 15

(ii) the transaction or event was not part of a series of transactions or events any of the purposes of which was to enable the entity to avoid or minimize any liability under a provision referred to in paragraph (3)(d) in respect of the trust. 20

Recovery limit 20

(8) The recovery limit referred to in paragraph (3)(e) and subsection (7) at a particular time of a particular entity in respect of a trust and a particular taxation year of the trust is the amount, if any, by which the greater of 25

(a) the total of all amounts each of which is

(i) an amount received or receivable after 2000 and before the particular time 30

(A) by the particular entity on the disposition of all or part of the particular entity's interest as a beneficiary under the trust, or 35

(B) by another entity (that was, when the amount became receivable, a specified party in respect of the particular entity) on the disposition of all or part of the specified party's interest as a beneficiary under the trust, 40

(ii) an amount (other than an amount described in subparagraph (i)) made payable by the trust after 2000 and before the particular time to 45

(A) the particular entity because of the interest of the particular entity as a beneficiary under the trust, or

(B) another entity (that was, when the amount became payable, a specified party in respect of the particular entity) because of the interest of the specified party as a beneficiary under the trust,

(iii) an amount (other than an amount described in subparagraph (i) or (ii)) that is the fair market value of a benefit received or enjoyed, after 2000 and before the particular time, from or under the trust by

(A) the particular entity, or

(B) another entity that was, when the benefit was received or enjoyed, a specified party in respect of the particular entity, or

(iv) the maximum amount that would be recoverable from the particular entity at the end of 2002 under subsection (2) (as it read in its application to taxation years that began before 2003) if the trust had tax payable under this Part at the end of 2002 and that tax payable exceeded the total of the amounts described in respect of the entity under paragraphs (2)(a) and (b) (as they read in their application to taxation years that began before 2003), except to the extent that the amount so recoverable is in respect of an amount that is included in the particular entity's recovery limit because of subparagraph (i) or (ii), and

(b) the total of all amounts each of which is the amount, when made, of a contribution to the trust before the particular time by the particular entity,

exceeds the total of all amounts each of which is

(c) an amount recovered before the particular time from the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003),

(d) an amount (other than an amount in respect of which this paragraph has applied in respect of any other entity) recovered before the particular time from a specified party in respect of the particular entity in connection with a liability of the particular entity (in respect of the trust and the particular year or a preceding taxation year of the trust) that arose because of the application of subsection (3) (or the application of this section as it read in its application to taxation years that began before 2003), or

(e) the amount, if any, by which the particular entity's tax payable under this Part for any taxation year in which an amount described in any of subparagraphs (a)(i) to (iii) was paid, became payable, was received, became receivable or was enjoyed by the particular entity exceeds the amount that would have been the particular entity's tax payable under this Part for that taxation year if no such amount were paid, became payable, were received, became receivable or were enjoyed by the particular entity in that taxation year. 5

**Determination of
contribution amount
— special case**

10

(9) If a contribution is made at any time by an entity to a trust as a consequence of a transaction that is, or as a consequence of a series of transactions or events that includes, the transfer at that time to the trust of a specified property, the amount of the contribution at that time, is deemed, for the purposes of clause (2)(u)(ii)(C), subparagraph (7)(a)(ii) and subsection (8), to be the greater of 15

(a) the amount, determined without reference to this subsection, of the contribution at that time, and 20

(b) the amount that is the greatest fair market value of the specified property, or property substituted for it, in the period that 25

(i) begins immediately after that time, and

(ii) ends at the end of the third calendar year that ends after that time. 30

**Where contributor
becomes resident in
Canada within 60
months after
contributing**

35

(10) In applying the definition “connected contributor” at each specified time, in respect of a taxation year of a trust, that is before the particular time at which a contributor to the trust becomes resident in Canada within 60 months after making a contribution to the trust, the contribution is deemed to have been made at a time other than a non-resident time of the contributor if 40

(a) in applying the definition “non-resident time” as of each of those specified times, the contribution was made at a non-resident time of the contributor; and 45

(b) in applying the definition “non-resident time” immediately after the particular time, the contribution is made at a time other than a non-resident time of the contributor.

**Application of
subsections (12) and
(13)**

5

(11) Subsections (12) and (13) apply to a trust or an entity in respect of a trust if

10

(a) at any time property of a trust (referred to in this subsection and subsections (12) and (13) as the “original trust”) is transferred or loaned, directly or indirectly, in any manner, to another trust (referred to in this subsection and subsections (12) and (13) as the “transferee 15 trust”);

(b) the original trust

(i) is deemed to be resident in Canada immediately before that 20 time because of paragraph (3)(a),

(ii) would be deemed to be resident in Canada immediately before that time because of paragraph (3)(a) if this section were read without reference to paragraph (a) of the definition “connected 25 contributor” and paragraph (a) of the definition “resident contributor”,

(iii) was deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to 30 taxation years that began before 2003, or

(iv) would have been deemed to be resident in Canada immediately before that time because of subsection (1) as it read in its application to taxation years that began before 2003 if that 35 subsection were read in that application without reference to subclause (b)(i)(A)(III) of that subsection; and

(c) it is reasonable to conclude that one of the reasons the transfer or loan is made is to avoid or minimize a liability under this Part that 40 arose, or that would otherwise have arisen, because of the application of subsection (3) (or because of subsection (1) as it read in its application to taxation years that began before 2003).

Deemed resident contributor

(12) The original trust described in subsection (11) (including a trust that has ceased to exist) is deemed to be, at and after the time of the transfer or loan referred to in subsection (11), a resident contributor to the transferee trust for the purpose of applying this section in respect of the transferee trust. 5

Deemed contributor

10

(13) An entity (including any entity that has ceased to exist) that is, at the time of the transfer or loan referred to in subsection (11), a contributor to the original trust, is deemed to be at and after that time 15

(a) a contributor to the transferee trust; and

(b) a connected contributor to the transferee trust, if at that time the entity is a connected contributor to the original trust. 20

Restricted property — exception

(14) A particular property that is at any time held, loaned or transferred, as the case may be, by an entity is not restricted property held, loaned or transferred, as the case may be, at that time by the entity if 25

(a) the particular property is identified in prescribed form, containing prescribed information, filed, by or on behalf of the entity, with the Minister on or before the entity's filing-due date (or a later date that is acceptable to the Minister) for the entity's taxation year that includes that time; and 30

(b) the Minister is satisfied that the particular property (or property for which the particular property is substituted property) was not at any time acquired, held, loaned or transferred by the entity (or any entity with whom the entity does not at any time deal at arm's length) as part of a transaction or series of transactions or events a purpose of which was to permit any change in the value of the property of a corporation (that is, at any time, a closely-held corporation) to accrue to the particular property. 40

Determining arm's length dealing

45

(15) In applying this section, in determining whether a particular entity and another entity deal, at any time, with each other at arm's

length, a reference in section 251 to the word “person” is to be read as a reference to the expression “entity (as defined in subsection 94(1))”.

Anti-avoidance —

150 entities

5

(16) If it can reasonably be considered that one of the main reasons that an entity is at any time a shareholder of a corporation or holds a capital interest in a trust is to cause the corporation to satisfy the condition in subparagraph (b)(i) of the definition “closely-held corporation” or the trust to satisfy the condition in clause (h)(i)(A) of the definition “exempt foreign trust”, as the case may be, the corporation or the trust, as the case may be, is deemed not to have satisfied at that time that condition. 10

(2) Subsection (1) applies to trust taxation years that begin after 2002, except that 15

(a) it also applies to taxation years that begin in 2001 and 2002 of a trust if the trust was created in 2001 and elects, in writing, to have section 94 of the *Income Tax Act*, as enacted by subsection (1), apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust’s filing-due date for the trust’s taxation year in which this Act is assented to; 20

(b) it also applies to taxation years that begin in 2002 of a trust if the trust was created in 2002 and elects, in writing, to have section 94 of the *Income Tax Act*, as enacted by subsection (1), apply to those taxation years by filing the election with the Minister of National Revenue on or before the trust’s filing-due date for the trust’s taxation year in which this Act is assented to; 25

(c) any election or form referred to in section 94 of the *Income Tax Act*, as enacted by subsection (1), that would otherwise be required to be filed before 120 days after this Act is assented to is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue within 365 days after this Act is assented to; 30

(d) the expression “if the entity is an individual and the trust arose on and as a consequence of the death of the individual, 18 months before the contribution time” in the definition “non-resident time” in subsection 94(1) of the *Income Tax Act*, as enacted by subsection (1), is, in respect of contributions made before June 23, 2000, to be read as the expression “if the contribution time is before June 23, 2000, 18 months before the end of the trust’s taxation year that includes the contribution time”; 35 40

(e) if a trust elects, by notifying the Minister of National Revenue in writing on or before its filing-due date for its taxation year that includes the day on which this Act is assented to, in applying section 94 of the *Income Tax Act*, as enacted by subsection (1), in respect of the trust the definition “arm’s length transfer” in subsection 94(1) of the *Income Tax Act*, as enacted by subsection (1), does not include a loan or other transfer of property that is identified in the election and that is made in a taxation year that begins before 2003; and

(f) if a trust ceased to exist before Announcement Date + 1, the definition “specified time” in subsection 94(1) of the *Income Tax Act*, as enacted by subsection (1), is to be read in respect of the trust without reference to paragraph (b) of that definition.

16. (1) Section 94.1 of the Act is replaced by the following:

Foreign Investment Entities — Imputed Income

Definitions

94.1 (1) The following definitions apply in this section and sections 94.2 to 94.4.

“arm’s length
interest”

« *participation sans
lien de dépendance* »

“arm’s length interest”, at any time in respect of a taxpayer, means a particular participating interest, of the taxpayer, in a non-resident entity, if the following conditions are met:

(a) it is reasonable to conclude that there are at least 150 persons each of which holds at that time participating interests in the non-resident entity that, at that time,

(i) are identical to the particular participating interest, and

(ii) have a total fair market value of at least \$500;

(b) the total of all amounts each of which is the fair market value, at that time, of the particular participating interest (or of a participating interest in the non-resident entity that is identical to the particular participating interest and that is held, at that time, by the taxpayer or an entity or individual with whom the taxpayer does not deal at arm’s length) does not exceed 10% of the total of all amounts each of which is the fair market value, at that time, of

a participating interest in the non-resident entity that is held, at that time, by any entity or individual and that is identical to the particular participating interest; and

(c) it is reasonable to conclude that participating interests in the non-resident entity that are identical to the particular participating interest can normally be acquired and sold by members of the public in the open market. 5

“beneficiary”

10

« *benéficiaire* »

“beneficiary” has, except for the purpose of paragraph 94.2(11)(f), the meaning assigned by subsection 94(1).

15

“carrying value”

« *valeur comptable* »

“carrying value”, at any time of property of a particular entity in respect of a taxpayer, means 20

(a) the fair market value at that time of the property, if

(i) the particular entity is an entity (referred to in this subparagraph as the “first entity”) in which the taxpayer holds at that time a participating interest or is another entity in which the first entity holds at that time a direct or indirect interest, 25

(ii) the taxpayer elects, by notifying the Minister in writing in the taxpayer’s return of income for the taxpayer’s taxation year that includes that time to have this paragraph apply to all of the particular entity’s property, and 30

(iii) the property is property that would be valued for the purpose of the particular entity’s financial statements as of that time if those financial statements included the property, if any, that is deemed by paragraph (2)(j) to be owned at that time by the entity; and 35

(b) in any other case, the amount at which the property would be valued for the purpose of the particular entity’s financial statements as of that time if those financial statements included the property, if any, that is deemed by paragraph (2)(j) to be owned at that time by the entity. 40

“designated cost”

« *coût désigné* »

“designated cost”, to a taxpayer at any time of a participating interest held, at that time, by the taxpayer in a foreign investment entity, is the amount determined by the formula

$$A + B + C + D + E + F - G$$

where

- A is the cost amount to the taxpayer of the participating interest at that time (determined without reference to paragraphs 53(1)(m) and (q) and 53(2)(g) and (g.1) and section 143.2),
- B is an amount included in respect of the participating interest because of this section in computing the taxpayer’s income for a taxation year that ends after 2002 and before that time,
- C is, if the participating interest was an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer’s last taxation year that began before 2003, the total of all amounts each of which is the amount determined, in respect of the offshore investment fund property for that last taxation year, under variable B, C or D of the definition “designated cost” in subsection 94.1(2) (as it read in its application to that last taxation year),
- D is, if the participating interest was acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer’s last taxation year that began before 2003, the amount, if any, by which the fair market value of the participating interest at the end of that last taxation year exceeds the cost amount to the taxpayer of the participating interest at the end of that last taxation year,
- E is, if one or more particular amounts has been made available by a person to another person after the last 2002 taxation year of the foreign investment entity and before that time (whether by way of gift, loan, payment for a share, transfer of property at less than its fair market value or otherwise) in circumstances in which it can reasonably be concluded that one of the main reasons for making the particular amount available to the other person was to increase the value of the participating interest, the total of all amounts each of which is the amount, if any, by which each particular amount

exceeds any increase in the cost amount to the taxpayer of the participating interest because of that particular amount,

F is, if the participating interest is acquired by the taxpayer after 2002, the amount, if any, by which the fair market value of the participating interest at the time it was so acquired exceeds the cost amount to the taxpayer of the participating interest at the time it was so acquired, and 5

G is, if the participating interest was last acquired by the taxpayer before 2003, and was not an offshore investment fund property (as defined in subsection 94.1(1) as it read in its application to taxation years that began before 2003) of the taxpayer at the end of the taxpayer's last taxation year that began before 2003, the amount, if any, by which the cost amount to the taxpayer of the participating interest at the end of that last taxation year exceeds the fair market value of the participating interest at the end of that last taxation year. 10 15

“entity”

20

« entité »

“entity” includes an association, a corporation, a fund, a joint venture, an organization, a partnership, a syndicate and a trust, but does not include a natural person. 25

“exempt business”

« *enterprise exempte* »

“exempt business”, of an entity at any time, means a business (other than a business carried on by the entity principally with entities or individuals with whom the entity does not deal at arm's length, a business carried on by a trust that is an exempt foreign trust because of paragraph (h) of the definition “exempt foreign trust” in subsection 94(1), and a business carried on by the entity as a member, of a partnership, that is not a qualifying member of the partnership, or that would not be such a qualifying member if the entity were a person) that is carried on by the entity at that time and that, throughout the period (in its taxation year that includes that time) during which the business was carried on by the entity, is 30 35 40

(a) carried on by the entity as a foreign bank, a trust company, a credit union, an insurance corporation or, if the entity is controlled by a taxpayer resident in Canada that is described in subparagraph 95(2.1)(a)(i), a trader or dealer in securities or commodities, the activities of which business are regulated under 45

(i) the laws of

(A) each country in which the business is carried on through a permanent establishment, as defined by regulation, and

(B) the country under whose laws the entity is governed, and any of exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued,

(ii) the laws of the country in which the business is principally carried on, or

(iii) the laws (referred to in clause (B) as the “regulating laws”) of a country that is a member of the European Union under whose laws another corporation is governed, and any of exists, was (unless the other corporation was continued in any jurisdiction) formed or organized, or was last continued, if

(A) the entity is a corporation that is related to the other corporation, and

(B) the business is principally carried on in a country, that is a member of the European Union, the laws of which recognize the regulating laws; or

(b) a business the principal purpose of which is to derive income from

(i) the development and exploitation of Canadian resource property, of foreign resource property, of timber resource property or of any combination of them,

(ii) the leasing or licensing of property that the entity or another entity related to the entity manufactured, produced, developed or purchased and developed,

(iii) the leasing of machinery or equipment that is owned by the entity and that is used by the lessee principally for the purpose of manufacturing or processing goods,

(iv) the sale of real property developed by the entity, an entity related to the entity, or a partnership of which the entity or the related entity is a qualifying member (or would be a qualifying member if the entity were a person),

(v) the rental of real property held by the entity or a partnership of which the entity is a qualifying member (or would be a qualifying member if the entity were a person), if

the management, maintenance, and other services in respect of the real property are provided primarily by the employees of

(A) the entity,

(B) a corporation related to the entity,

(C) the partnership,

(D) a qualifying member (or an entity that would be a 10
qualifying member if the entity were a person) of the
partnership, or

(E) or any combination of employers described in clauses
(A) to (D), or 15

(vi) a combination of businesses described in subparagraphs
(iv) and (v).

“exempt interest”

« *participation*
exempte »

20

“exempt interest”, of a taxpayer in a non-resident entity at any time,
means a participating interest held, at that time, by the taxpayer, in 25
the non-resident entity, if

(a) the non-resident entity is throughout the period, in the non-
resident entity’s taxation year that includes that time, during which
the taxpayer held the participating interest, 30

(i) a controlled foreign affiliate of the taxpayer,

(ii) a qualifying entity that is a foreign affiliate of the taxpayer
in respect of which the taxpayer has a qualifying interest 35
(within the meaning assigned by paragraph 95(2)(m)), or

(iii) a partnership,

(b) the taxpayer is, throughout its taxation year that includes that 40
time, a financial institution (within the meaning assigned by
subsection 142.2(1)) and the participating interest is, at that time,

(i) a mark-to-market property (within the meaning assigned by
subsection 142.2(1)), or 45

(ii) a property described in an inventory of a business of the
taxpayer, which inventory is valued, in computing the

taxpayer's income for that taxation year from the business, in accordance with section 1801 of the Regulations;

(c) the participating interest is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, a right

(i) under an employee stock option plan, or similar agreement, to acquire a share of the capital stock of the non-resident entity,

(ii) granted by the non-resident entity, or another entity with which the non-resident entity does not deal at arm's length, and

(iii) acquired by the taxpayer, at a time when the taxpayer dealt at arm's length with the entity that granted the right, solely because the taxpayer was an employee of an entity referred to in subparagraph (ii);

(d) both

(i) the non-resident entity is throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest, an entity (other than a trust that is an exempt foreign trust because of paragraph (h) of the definition "exempt foreign trust" in subsection 94(1)) all or substantially all of the carrying value of the property of which is attributable to properties that are shares of the capital stock of a corporation (that is not a foreign investment entity) that employs the taxpayer or that is related to another corporation that employs the taxpayer, and

(ii) an amount that is all or substantially all of the non-resident entity's payable net accounting income for its taxation year that includes that time becomes payable by it to its interest holders in that taxation year, or within 120 days after the end of that taxation year, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which it became payable; or

(e) it is reasonable to conclude that the taxpayer has, at that time, no tax avoidance motive in respect of the participating interest, and

(i) throughout the period, in the non-resident entity's taxation year that includes that time, during which the taxpayer held the participating interest,

(A) the participating interest is an arm's length interest of the taxpayer,

(B) the non-resident entity is resident in a country in which there is a prescribed stock exchange, and

(C) participating interests, in the non-resident entity, that are identical to the participating interest are listed on a prescribed stock exchange, or

(ii) both

(A) throughout that period the non-resident entity

(I) is governed by the laws of one or more countries (other than a prescribed country) with which Canada has entered into a tax treaty,

(II) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued, under those laws, and

(III) while it is governed by the laws of a country, is under the tax treaty with that country resident in that country, and

(B) either

(I) throughout that period the participating interest is an arm's length interest of the taxpayer, or

(II) throughout that period the non-resident entity is, under the tax treaty with the United States of America, resident in the United States of America, and throughout the period, in the taxpayer's taxation year that includes that time, during which the taxpayer is resident in Canada, the taxpayer is a citizen of the United States of America and is liable for and subject to income tax in the United States of America for that taxation year because of that citizenship.

“exempt property”

« *bien exempt* »

“exempt property”, of a particular entity at any time, means, in determining whether a particular taxpayer's interest in the particular entity is a participating interest in a foreign investment entity,

(a) a property, of the particular entity, that is at that time used or held principally in a business (other than a business that is at that time an investment business carried on by the particular entity or by another entity related, otherwise than by reason of a right referred to in paragraph 251(5)(b), to the particular entity) carried on by the particular entity or another entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity;

(b) indebtedness owing by another entity (referred to in this paragraph as the “indebted entity”), if

(i) each of the particular entity and the indebted entity is, at that time,

(A) a foreign affiliate

(I) of the particular taxpayer, and

(II) in respect of which the particular taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), or

(B) a foreign affiliate

(I) of another entity that is resident in Canada and of which the particular taxpayer is a controlled foreign affiliate, and

(II) in respect of which the other entity referred to in subclause (I) has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

(ii) the indebtedness would be excluded property (within the meaning of the definition “excluded property” in subsection 95(1)) of the particular entity, if

(A) the taxpayer referred to in that definition were the particular taxpayer and the foreign affiliate of the taxpayer referred to in that definition were the particular entity, or

(B) the taxpayer referred to in that definition were the other entity described in subclause (i)(B)(I) and the foreign affiliate of the taxpayer referred to in that definition were the particular entity; and

(c) a particular property, if

(i) the particular property (or other property for which the particular property is substituted) was acquired by the particular entity at any time within the 36-month period that ends at the particular time (or within any longer period that ends at the particular time that the Minister considers 5 reasonable if the particular entity applies, in writing, to the Minister within 36 months after the property was acquired by the particular entity) because the particular entity

(A) issued a debt or a participating interest in the particular 10 entity,

(B) disposed of property used principally in a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by 15 reason of a right referred to in paragraph 251(5)(b)) to the particular entity,

(C) disposed of a participating interest in another entity all or substantially all of the fair market value of the property 20 of which is attributable to property used principally in a business, other than an investment business, carried on by the other entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the other entity, or 25

(D) accumulated income of the particular entity derived from a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) 30 to the particular entity, and

(ii) the issuance, disposition or accumulation referred to in subparagraph (i) was made or amassed for the purpose of 35

(A) acquiring property to be used principally in, or making expenditures for the purpose of earning income from, a business, other than an investment business, carried on by the particular entity or an entity related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the 40 particular entity, or

(B) acquiring a participating interest that is a significant interest in another entity all or substantially all of the fair market value of the property of which is attributable to 45 property used principally in a business, other than an investment business, carried on by the other entity.

“exempt taxpayer”*« contribuable**exempte »*

“exempt taxpayer”, for a taxation year of the taxpayer, means

5

(a) a person whose taxable income for a period that ends at the end of the taxation year is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z));

10

(b) a trust (other than a personal trust) if

(i) the only beneficiaries (in this paragraph, determined without reference to subsection 248(25) under the trust are persons,

15

(ii) the interest of each beneficiary under the trust is, at all times that the interest exists during the taxation year, a specified fixed interest (as defined in subsection 94(1)) of the beneficiary in the trust,

20

(iii) each beneficiary under the trust at any time in the taxation year is a person whose taxable income, for the period that includes all of those times in the taxation year, is exempt from tax under this Part because of subsection 149(1) (otherwise than because of paragraph 149(1)(q.1), (t) or (z)), and

25

(iv) the trust is resident in Canada at the end of the taxation year; and

30

(c) an individual (other than a trust) who, before the end of the taxation year, was resident in Canada for a period of, or periods the total of which is, not more than 60 months, but not including an individual who, before the end of the taxation year, was never non-resident;

35

“financial statements”*« états financiers »*

40

“financial statements”, of a particular entity for a particular taxation year of the entity and in respect of a taxpayer, means

(a) the balance sheet and the statement of income of the particular entity, if

45

(i) the particular entity is an entity (referred to in this subparagraph as the “first entity”) in which the taxpayer holds,

in the particular taxation year, a participating interest or is another entity in which the first entity has, in the particular taxation year, a direct or indirect interest,

(ii) the taxpayer elects (in the taxpayer's return of income for the taxpayer's taxation year in which the particular taxation year ends) to have this paragraph apply in respect of the particular entity and the participating interest, and 5

(iii) that balance sheet and statement of income would be prepared in accordance with generally accepted accounting principles used in Canada for the particular year or in accordance with generally accepted accounting principles that are substantially similar to those used in Canada if those principles did not require consolidation; and 10 15

(b) in any other case, the balance sheet and statement of income of the particular entity, if that balance sheet and statement of income are prepared for the particular taxation year in accordance with generally accepted accounting principles used for the taxation year in Canada or in accordance with generally accepted accounting principles that are substantially similar to those used for the taxation year in Canada. 20

“foreign bank”

25

« *banque étrangère* »

“foreign bank” has the meaning assigned by subsection 95(1).

“foreign investment entity”

30

« *entité de placement étrangère* »

“foreign investment entity”, at any time, means an entity that is, at that time, a non-resident entity unless, 35

(a) at the end of its taxation year that includes that time, it is an exempt foreign trust (as defined by the definition “exempt foreign trust” in subsection 94(1)) other than a trust that is an exempt foreign trust because of paragraph (g) (read without reference to its clause (iii)(A)) of that definition or paragraph (h) of that definition; 40

(b) at the end of that taxation year, the carrying value of all of its investment property is not greater than one-half of the carrying value of all of its property; or 45

(c) throughout that taxation year, its principal undertaking was the carrying on of a business that is not an investment business.

**“investment
business”**

« *entreprise de
placement* »

5

“investment business”, of an entity at any time, means a business (other than a business that is at that time an exempt business) carried on by the entity (including, for greater certainty, a business carried on by the entity as a member of a partnership) at that time, the principal purpose of which is to derive income or profits described in any of the following paragraphs:

15

(a) income (including interest, dividends, rents, royalties or any similar return on investment or any substitute for such a return) from property;

(b) income from the insurance or reinsurance of risks;

20

(c) income from the factoring of trade accounts receivable; or

(d) profits from the disposition of investment property.

25

**“investment
property”**

« *bien de placement* »

“investment property”, of a particular entity at any time, includes property of the particular entity that is at that time

(a) a share of the capital stock of a corporation,

(b) an interest as a member of a partnership,

35

(c) an interest as a beneficiary under a trust,

(d) an interest in any other entity,

40

(e) indebtedness,

(f) an annuity,

(g) a commodity (or commodity future) purchased or sold, directly or indirectly in any manner whatever, on a commodities or commodities futures exchange,

45

(h) real property,

(i) a Canadian resource property or a foreign resource property,

(j) currency,

5

(k) a derivative financial product, or

(l) an interest, an option, or a right in respect of property that is investment property because of any of paragraphs (a) to (k), 10

but, does not include

(m) except for the purpose of applying the definition “investment business” in this subsection or the definition “tracking entity” in subsection 94.2(1), property that is at that time exempt property of the particular entity, 15

(n) except for the purpose of applying the definition “qualifying entity”, property that is at that time 20

(i) a share of the capital stock of the particular entity,

(ii) a share of the capital stock of a corporation that is, throughout the period, in the particular entity’s taxation year that includes that time, during which the particular entity holds the share, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity, 25 30

(iii) an interest in a partnership that is, throughout the period, in the particular entity’s taxation year that includes that time, during which the particular entity is a member of the partnership, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity, or 35

(iv) indebtedness owing by an entity that is, throughout the period, in the particular entity’s taxation year that includes that time, during which the particular entity holds the indebtedness, a qualifying entity if the particular entity has at that time a significant interest in that qualifying entity or that qualifying entity has at that time a significant interest in the particular entity, 40 45

(o) a commodity (referred to in this paragraph and paragraph (p) as an “exempt commodity”) that is manufactured, produced, grown, extracted or processed by the particular entity or a person related (otherwise than because of a right referred to in paragraph 251(5)(b)) to the particular entity, and

5

(p) a commodity future in respect of an exempt commodity.

**“net accounting
income”**

10

**« résultat comptable
net »**

“net accounting income”, of an entity for a taxation year of the entity, means its net income, before income taxes and extraordinary items, for the year reported in its financial statements for the year.

15

“non-resident entity”

**« entité non-
résidente »**

20

“non-resident entity”, at any time, means

(a) a corporation or trust that is non-resident at that time; and

25

(b) any entity (other than a corporation or trust) that at that time

(i) exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued under the laws of a country or a political subdivision of a country other than Canada, or

30

(ii) is governed under the laws of a country or a political subdivision of a country other than Canada.

35

**“participating
interest”**

**« participation
déterminée »**

40

“participating interest”, of a particular entity or individual in a non-resident entity, means a property that is

(a) if the non-resident entity is a corporation, a share of the capital stock of the corporation;

45

(b) if the non-resident entity is a trust, a specified interest in the trust;

(c) if the non-resident entity is not a corporation or trust, an interest in the non-resident entity; and

(d) under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, convertible into, exchangeable for, or a right to acquire, directly or indirectly,

(i) a property described in any of paragraphs (a) to (c), or

(ii) a property (other than money) the fair market value of which is determined primarily by reference to the fair market value of a property described in any of paragraphs (a) to (c).

**“payable net
accounting income”**
**« résultat comptable
net à payer »**

15

“payable net accounting income”, of an entity for a taxation year of the entity, means its net income, after income taxes and extraordinary items, for the year reported in its financial statements for the year.

“qualifying entity”
« entité admissible »

25

“qualifying entity”, in a period, means a particular entity that is a corporation or partnership all or substantially all of the carrying value of the property of which is, throughout the period, attributable to the carrying value of particular property that is, throughout the portion of the period that the particular property is property of the particular entity,

(a) property other than investment property;

(b) investment property that is a participating interest in or debt issued by another entity if, throughout the portion of the period that the participating interest or debt is property of the particular entity,

(i) the principal business of the other entity is not an investment business, and

(ii) either

(A) the particular entity has a significant interest in the other entity, or

(B) the particular entity

45

(I) actively participates in or exercises significant influence over the governance or the management of that other entity, directly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the corporation) or by reason of an agreement in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity, or

(II) carries out a plan of action that it has established for the purpose of obtaining its objective of actively participating in or exercising significant influence over the governance or the management of that other entity, directly or indirectly, by reason of its status as a holder of a significant number of participating interests in that other entity (when compared to the number of participating interests held by each other holder of interests in the particular entity) or by reason of an agreement in writing between the particular entity and one or more other holders of a significant number of participating interests in that other entity;

(c) investment property in respect of which the particular entity establishes that the property or proceeds from the disposition of the property is to be used by the particular entity for the purpose of acquiring property described in paragraph (a) or (b); or

(d) investment property that is a particular property held by the particular entity if

(i) the particular property (or other property for which the particular property is substituted property) was last acquired by the particular entity within 36 months before the end of the period (or within any greater number of months that the Minister considers reasonable if the particular entity applies, in writing, to the Minister within the 36 months after the property was acquired by the particular entity),

(ii) the particular property was so acquired by the particular entity because it

(A) issued a debt, or a participating interest in it,

(B) disposed of property described in any of paragraphs (a) to (c), or

(C) accumulated its income, and

(iii) the issuance, disposition or accumulation referred to in subparagraph (ii) was made or amassed for the purpose of acquiring property that, if owned by the particular entity, would be property described in any of paragraphs (a) to (c). 5

“significant interest”

« *participation*

notable »

10

“significant interest”, of a particular entity in another entity at any time, means

(a) if the other entity is a corporation, a share of the capital stock of the corporation, if at that time the particular entity or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity holds shares of the capital stock of the corporation 15

20

(i) that would give the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, 25% or more of the votes that could be cast under all circumstances at an annual meeting of shareholders of the corporation, and 25

(ii) that have a fair market value of 25% or more of the fair market value of all of the issued and outstanding shares of the corporation; 30

(b) if the other entity is a partnership, an interest of the particular entity as a member of the partnership, if at that time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds interests as a member of the partnership that have a fair market value of 25% or more of the fair market value of all membership interests in the partnership; and 35

40

(c) if the other entity is a non-discretionary trust, an interest as a beneficiary under the trust, if at that time the particular entity, or the particular entity together with entities related (otherwise than by reason of a right referred to in paragraph 251(5)(b)) to the particular entity, holds such interests under the trust that have a fair market value of 25% or more of the fair market value of all the interests as beneficiaries under the trust. 45

“specified interest”« *participation**désignée* »

“specified interest”, at any time of an entity or individual in a trust, 5
means, an interest of the entity or individual as a beneficiary under
the trust if

(a) the trust is at that time an exempt foreign trust because of
paragraph (g) or (h) of the definition “exempt foreign trust” in 10
subsection 94(1); or

(b) the interest includes at that time a right of the entity or
individual as a beneficiary under the trust to receive at or after
that time income or capital of the trust, unless the entity or 15
individual is at that time a testamentary beneficiary, under the
trust, as defined by subsection 94(1).

“specified party”« *tiers déterminé* »

20

“specified party” in respect of a particular individual or particular entity,
as the case may be, means another individual or other entity that does
not deal at arm’s length with the particular individual or the particular
entity, as the case may be. 25

“taxation year”« *année**d’imposition* »

30

“taxation year”, of a non-resident entity that is not a corporation or an
individual, means

(a) in respect of a business or property of the non-resident entity
for which the accounts of the non-resident entity are ordinarily 35
made up, the period that would be determined under section 249.1
in respect of the non-resident entity if the non-resident entity were
a corporation; and

(b) in any other case, a calendar year. 40

Rules of application

(2) For the purposes of applying this section and sections 94.2 to 94.4
in respect of a particular participating interest, in a particular non- 45
resident entity, held by a taxpayer in a particular taxation year of the
taxpayer (and in respect of any other participating interests, in the
particular non-resident entity, that are identical to the particular

participating interest and that are held by the taxpayer in the particular taxation year),

(a) if the financial statements of an entity (referred to in this paragraph as the “first entity”) for a taxation year (referred to in this paragraph as the “specified year”) of the first entity reflect property, indebtedness, income or losses of another entity, 5

(i) the business and non-business activities for the specified year carried on by the other entity, the net accounting income for the specified year determined for the other entity from those activities, and the property and indebtedness for the specified year owned by or owed by, as the case may be, the other entity are deemed for the specified year to be carried on by, determined for, owned by or owed by, as the case may be, the first entity, and 10 15

(ii) an exempt business of the other entity at any time in the specified year is, if it is a business the activities of which are deemed by subparagraph (i) to be carried on by the first entity, deemed to be an exempt business of the first entity at that time in the specified year; 20

(b) generally accepted accounting principles used, for a taxation year, in the United States of America or in countries that are members of the European Union are substantially similar to those used in Canada in respect of that taxation year; 25

(c) in determining the designated cost to the taxpayer of the participating interest at any time in the particular taxation year, if the participating interest is a specified interest in a trust that is an exempt foreign trust (as defined by subsection 94(1)) because of paragraph (g) of that definition, the cost at that time to the taxpayer of the participating interest is deemed to be the total of all amounts each of which is the fair market value, immediately before it was acquired by the trust, of a property that is held by the trust at that time and that may be reasonably be considered to be held for the purpose of satisfying a right (other than a right under an arrangement to which subsection 7(2) or (6) applies) of the taxpayer in respect of the participating interest; 30 35 40

(d) the reference in subsections (4) and 94.3(4) to the expression “as income from property from a property that is the participating interest” is to be read as a reference to the expression “as income from property from a property that is a source outside Canada that is the participating interest”, if the taxpayer is a trust and the portion of the net accounting income of the particular non-resident entity, from sources outside Canada, for its last taxation year that ends in the 45

particular taxation year exceeds 90% of the total net accounting income of the particular non-resident entity for that last taxation year;

(e) in determining whether the principal business of an entity is, in a taxation year of the entity, an investment business,

(i) subject to subparagraphs (ii) and (iii), the principal business of the entity is to be determined by reference to the facts and circumstances including the fair market value of assets used in the activities carried on, during the entity's taxation year, by the entity, the amount of time spent by the entity's employees in carrying out those activities, the amount of expenditures incurred by the entity in respect of those activities and the revenue derived by the entity from those activities,

(ii) subject to subparagraph (iii), if the taxpayer has, by notifying the Minister in writing in the taxpayer's return of income for the particular taxation year, elected to have this subparagraph apply in respect of the entity, the principal business of the entity for the taxation year of the entity is deemed

(A) to be an investment business if the total net accounting income of the entity, for the entity's taxation year, derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is equal to or greater than the total net accounting income of the entity for the entity's taxation year derived from businesses (other than investment businesses), and

(B) not to be an investment business if the total net accounting income of the entity for the entity's taxation year derived from investment property (other than investment property used or held in the course of carrying on an investment business) and from investment businesses is less than the total net accounting income of the entity for the entity's taxation year derived from businesses (other than investment businesses) carried on by the entity in the entity's taxation year, and

(iii) if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the principal business of the entity is in the entity's taxation year an investment business, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand, the principal business of the entity is deemed to be an investment business;

(f) in determining whether an entity or natural person and another entity or natural person are related to each other or deal at arm's length with each other, a person referred to in section 251 includes an entity;

(g) in applying subparagraph (e)(i) of the definition "exempt interest", if the particular non-resident entity is not a corporation, a partnership or a trust, it is deemed not to be resident in a particular country, unless

(i) the particular country is a country other than a prescribed country,

(ii) the particular non-resident entity is governed, and exists, was (unless the entity was continued in any jurisdiction) formed or organized, or was last continued under the laws of, the particular country, and

(iii) the particular non-resident entity is liable, under the laws of the particular country, to pay an income or profits tax imposed by the government of the particular country on all of the particular non-resident entity's income, profits or gains;

(h) subject to paragraph (i), a non-resident entity is deemed to be a controlled foreign affiliate of the taxpayer throughout the period that begins at the earliest time, in the taxpayer's taxation year in the return of income for which the taxpayer elects in prescribed form to treat the non-resident entity as a controlled foreign affiliate of the taxpayer (referred to in this paragraph as the "taxpayer's election year"), at which the non-resident entity is a foreign affiliate of the taxpayer and that ends at the earliest subsequent time at which it is not a foreign affiliate of the taxpayer, if

(i) at any time in the taxpayer's election year

(A) the taxpayer holds a participating interest in the non-resident entity and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins) in the taxpayer's election year, or

(B) a controlled foreign affiliate of the taxpayer holds a participating interest in the non-resident entity and a taxation year of the non-resident entity ends (or the first taxation year of the non-resident entity begins) in a taxation year of the controlled foreign affiliate that ends in the taxpayer's election year,

(ii) the non-resident entity is, at the end of its taxation year referred to in subparagraph (i), a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(m)), and

5

(iii) the taxpayer has not made any other election under this paragraph in respect of the non-resident entity;

(i) an election made by the taxpayer under paragraph (h) is, other than for the purposes of applying this paragraph and subparagraph (h)(iii), deemed never to have been made, if

10

(i) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine an amount that would, if this Act were read without reference to this paragraph, be required to be added or deducted (otherwise than under subsection 104(13)) in computing the taxpayer's income for the year because of the application of section 91 and an election under paragraph (h) in respect of a foreign affiliate, and

15
20

(ii) information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

25

(j) if the taxpayer has, by notifying the Minister in writing in the taxpayer's return of income for the particular taxation year, elected to have this paragraph apply in respect of the particular participating interest, the taxpayer files with that return of income prescribed information in prescribed form, an entity (referred to in this paragraph as the "specified entity") has a significant interest in another entity that is a corporation, partnership or non-discretionary trust, the particular non-resident entity is the specified entity or has, directly or indirectly, an interest in the specified entity, and the financial statements of the specified entity do not reflect property or indebtedness of the other entity, in determining only whether the particular non-resident entity is a foreign investment entity, and where the taxpayer so stipulates in that election, whether the particular non-resident entity is a qualifying entity

30

35

40

(i) each of the following is deemed to be nil:

(A) the carrying value of each

45

(I) participating interest held, at the time (referred to in this paragraph as the "specified time") that is the end of the particular non-resident entity's last taxation year that ends

in the particular taxation year, by the specified entity in the other entity, and

(II) debt owing at the specified time to the specified entity by the other entity (other than a debt acquired in the ordinary course of a business that is not at the specified time an investment business carried on by the specified entity), and

(B) the net accounting income of the specified entity at the specified time derived from property of the specified entity the carrying value of which is deemed to be nil under clause (A),

(ii) each property owned (or that is deemed by this subparagraph to be owned) at the specified time by the other entity (other than a debt owing to the other entity by the specified entity where the other entity and the specified entity are related to each other at the specified time) and that would be valued for the purpose of the balance sheet of the other entity at the specified time is deemed to be owned at the specified time by the specified entity and is deemed to have a carrying value at the specified time equal to the amount determined by the formula

$$A \times B/C$$

where

A is

(A) if the taxpayer has made an election under paragraph (a) of the definition “carrying value” to value the property of the particular non-resident entity at its fair market value at the specified time, the fair market value of the property of the other entity at the specified time, or

(B) in any other case, the amount that would be the carrying value of the property of the other entity at the specified time if that definition were read without reference to paragraph (a),

B is the total of all amounts each of which is

(A) the fair market value at the specified time of a participating interest in the other entity owned at the specified time by the specified entity, and

(B) the fair market value at the specified time of a debt (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by the specified entity)

that the other entity owes at the specified time to the specified entity, and

C is the total of all amounts each of which is

5

(A) the fair market value at the specified time of a participating interest in the other entity owned at the specified time by an individual or an entity, and

(B) the fair market value at the specified time of a debt owing at the specified time by the other entity to a holder of a participating interest in the other entity (other than a debt acquired in the ordinary course of a business that is not an investment business carried on by a holder of a participating interest in the other entity),

15

(iii) the specified entity is deemed

(A) to have carried on the proportion obtained for the formula B/C in subparagraph (ii) (in respect of the specified entity and the other entity) of the activities carried on at the specified time by the other entity in which it used the property referred to in subparagraph (ii), and

20

(B) to have that proportion of the net accounting income of the other entity for the period in the taxation year of the other entity ending at the specified time that was derived from the activities referred to in clause (A), and

25

(iv) an exempt business of the other entity at any time in the particular non-resident entity's last taxation year that ends in the particular taxation year is, to the extent that its activities are deemed by subparagraph (iii) to be carried on by the specified entity, deemed to be an exempt business of the specified entity at that time in that last year;

30

(k) subject to paragraphs (m) and (n), the taxpayer has a tax avoidance motive in respect of the particular participating interest (and any participating interests of the taxpayer in the particular non-resident entity that are identical to the particular participating interest), only if it is reasonable to conclude that the main reasons for the taxpayer acquiring, holding or having the particular participating interest include

40

(i) the derivation of a benefit the value of which can reasonably be attributed principally, directly or indirectly, to income derived from investment property, to profits or gains from the disposition

45

of investment property, or to an increase in value of investment property, and

(ii) the deferral or reduction of the amount of tax payable on that income or those profits or gains;

5

(l) in applying paragraph (k) in respect of the particular participating interest, the factors to be considered in determining the existence of a tax avoidance motive include

10

(i) the nature, organization and operation of

(A) the particular non-resident entity,

(B) any foreign investment entity in which the particular non-resident entity or a specified party in respect of the particular non-resident entity has a direct or indirect interest, and

(C) any foreign investment entity in which the taxpayer or a specified party in respect of the taxpayer has a direct or indirect interest,

(ii) the form of, and the terms and the conditions governing, the direct or indirect interests referred to in subparagraph (i),

25

(iii) the extent to which and the time at which the particular non-resident entity, or an entity in which a direct or indirect interest referred to in subparagraph (i) is held, is subject to an income or profits tax on its income, profits and gains,

30

(iv) the extent to which and the time at which the taxpayer, or an entity or individual that holds a direct or indirect interest referred to in subparagraph (i), is subject to an income or profits tax on the taxpayer's or entity's, as the case may be, share of the income, profits and gains of the entity in which the direct or indirect interest is held, and

(v) the amount of tax that would have been payable by the taxpayer under this Part had the taxpayer earned the income or realized the profits or gains in respect of the investment property referred to in subparagraph (k)(i) at the time that the income was earned, or the profits or gains were realized, by the entities that owned or held the investment property;

40

(m) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest held by the taxpayer at any time in the particular taxation year if an amount that is all or substantially all of the payable net accounting income

45

(i) of the particular non-resident entity for each of its taxation years that ends in the particular taxation year becomes payable by it to its interest holders in, or within 120 days after, that taxation year of the particular non-resident entity, and the taxpayer's share of that amount is included in computing the taxpayer's income for the taxpayer's taxation year that includes the time at which the amount became payable, and 5

(ii) of each other foreign investment entity, in which the particular non-resident entity has a direct or indirect interest, for each of the other entity's taxation years that ends in the particular taxation year becomes payable by the other entity to its interest holders in, or within 120 days after, the end of that taxation year of the other entity, and the particular non-resident entity's share of that amount is included in computing its payable net accounting income for its taxation year that includes the time at which the amount became payable; 10 15

(n) the taxpayer does not have a tax avoidance motive in respect of the particular participating interest, if throughout the period, in the particular taxation year, during which the taxpayer held the participating interest the particular non-resident entity was a "Regulated Investment Company" for the purposes of sections 851(b) and 852(a) of the United States *Internal Revenue Code of 1986* or a "Real Estate Investment Trust" for the purposes of sections 856(c) and 857(b) of that Code and the taxpayer includes, in computing the taxpayer's income for the particular taxation year, the amount of payable net accounting income that became payable by the particular non-resident entity to the taxpayer in the particular taxation year; 20 25

(o) in applying paragraph (d) of the definition "exempt interest", paragraphs (m) and (n), the definition "mark-to-market formula" in subsection 94.2(1), and subsections 94.4(2) and (4), an amount is deemed not to have become payable at any time to an entity or individual, as the case may be, unless it was paid on or before that time to the entity or individual, as the case may be, or the entity or individual, as the case may be, was entitled on or before that time to enforce payment of it; 30 35

(p) the definition "exempt property" in subsection (1) does not apply in respect of a property of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether property is an exempt property, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand; 40 45

(*q*) paragraphs (*a*) to (*d*) of the definition “foreign investment entity” do not apply in respect of the particular non-resident entity if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the particular non-resident entity is a foreign investment entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(*r*) the definition “qualifying entity” in subsection (1) does not apply if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether an entity is a qualifying entity, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand; and

(*s*) if at any time a taxpayer has a participating interest in a particular foreign investment entity and the taxpayer has at that time a participating interest (referred to in this paragraph as the “indirect participating interest”) in another non-resident entity solely because the particular foreign investment entity has at that time a participating interest in that other non-resident entity, then the indirect participating interest is deemed (other than in applying this paragraph) not to be a participating interest of the taxpayer at that time.

**Conditions for
application of tax
regime for foreign
investment entities**

(3) This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity if

(*a*) the taxpayer is not an exempt taxpayer for the particular taxation year;

(*b*) the participating interest is held by the taxpayer at the end of a taxation year of the non-resident entity that ends in the particular taxation year;

(*c*) at the end of that taxation year of the non-resident entity it is a foreign investment entity; and

(d) at the end of that taxation year of the non-resident entity the taxpayer's participating interest is not an exempt interest of the taxpayer.

**Income inclusion —
imputed income
regime**

5

(4) If subsection (3) or 94.2(9) applies to a taxpayer resident in Canada for a taxation year of the taxpayer in respect of a participating interest and subsections 94.2(3) and 94.3(3) do not apply to the taxpayer for the taxation year in respect of the participating interest, then this subsection applies to the taxpayer for the taxation year in respect of the participating interest and there shall be included (as income from property from a property that is the participating interest) in computing the taxpayer's income for that taxation year the total of all amounts each of which is the amount, in respect of each month in that taxation year, at the end of which month the taxpayer holds the participating interest, determined by the formula

10
15
20

$$A \times B$$

where

A is the designated cost, to the taxpayer of the participating interest, at the end of the month, and

25

B is the quotient obtained when the rate of interest prescribed, in respect of amounts required by this Act to be paid by the Minister, for the quarterly period that includes that month is divided by 12.

30

**Loss on disposition
of interest —
reconciliation**

35

(5) Notwithstanding any other provision of this Act, if a taxpayer disposes, at a particular time in a particular taxation year, of a participating interest of the taxpayer and subsection (4) applied for the purpose of computing the taxpayer's income, for any taxation year of the taxpayer that began on or before the particular time, in respect of the participating interest

40

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

45

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount included in respect of the participating interest because of subsection (4) in computing the taxpayer's income for

(I) the particular taxation year, or 5

(II) any taxation year, of the taxpayer, that ends before the particular taxation year and after the taxpayer last acquired the participating interest

10

exceeds

(B) the total of all amounts each of which is an amount in respect of the participating interest that is deductible under paragraph 94.4(2)(a) in computing the taxpayer's income for 15
any of those taxation years, and

(ii) the amount that would, if the Act were read without reference to paragraph (b) and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of 20
the participating interest; and

(b) the taxpayer's capital loss for the taxation year from the disposition of the participating interest is the amount, if any, by 25
which

(i) the amount that would, if the Act were read without reference to this paragraph and subparagraph 40(2)(g)(i), be the taxpayer's capital loss for the particular taxation year from the disposition of 30
the participating interest

exceeds

(ii) the amount in respect of the participating interest deducted by the taxpayer under paragraph (a) in computing the taxpayer's 35
income for the particular taxation year.

Foreign Investment Entities — Mark-to-Market

Definitions

40

94.2 (1) The definitions in subsection 94.1(1), and the following definitions, apply in this section.

“deferral amount”

« *montant de report* »

“deferral amount”, of a taxpayer in respect of a participating interest in an entity, means, subject to subsections (6) and (14) to (18), the positive or negative amount determined by the formula

$$A \times (B - C)$$

where

10

A is

(a) if, immediately before the beginning of the taxpayer’s first taxation year that began after 2002, the interest was capital property held by the taxpayer, 1/2; and

(b) in any other case, 1,

B is

20

(a) the fair market value of the interest at the first time in a particular taxation year of the taxpayer at which the taxpayer was resident in Canada where

25

(i) the taxpayer held the interest at the end of the preceding taxation year,

(ii) at the end of that preceding year, the taxpayer was resident in Canada or the interest was taxable Canadian property,

30

(iii) subsection (4) did not apply to the taxpayer for the purpose of computing the taxpayer’s income in respect of the interest for any preceding taxation year, and

35

(iv) subsection (4) applies to the taxpayer for the purpose of computing the taxpayer’s income in respect of the interest for the particular year; and

(b) nil in any other case, and

40

C is

(a) if paragraph (a) of the description of B applies in respect of the interest, the cost amount of the property immediately before the first time in the particular year at which the taxpayer was resident in Canada; and

45

(b) nil in any other case.

“gross-up factor”

« *facteur de*

majoration »

5

“gross-up factor”, for a particular deferral amount, means

(a) if the amount determined for A in the definition “deferral amount” in respect of the particular deferral amount is $1/2$, 2; and 10

(b) in any other case, 1.

“mark-to-market formula”

15

« *formule*

d'évaluation à la

valeur du marché »

“mark-to-market formula”, for a taxation year of a taxpayer in respect of a participating interest of the taxpayer in a non-resident entity, means the formula 20

$$(A + B + C + D) - (E + F + G)$$

25

where

A is the total of all amounts each of which is the taxpayer's proceeds from a disposition of the participating interest in the taxation year (other than a disposition deemed to arise because of subsection 128.1(4) or 149(10)), 30

B is

(a) if the taxpayer held the participating interest at the end of the taxation year, the fair market value (determined before taking into account any amount payable at the end of the taxation year from the non-resident entity in respect of the participating interest) at that time of the participating interest, and 35

40

(b) in any other case, nil,

C is the total of all amounts (other than an amount to which the description of A applies) received by the taxpayer in the taxation year from the non-resident entity in respect of the participating interest, 45

D is

(a) the taxpayer's deferral amount in respect of the participating interest, if

(i) the deferral amount is a positive amount,

(ii) the participating interest was not disposed of by the taxpayer in the taxation year, and

(iii) the taxpayer so elects in respect of the participating interest in prescribed form filed with the Minister not later than the taxpayer's filing-due date for the taxation year,

(b) the taxpayer's deferral amount in respect of the participating interest if

(i) the taxpayer disposed of the participating interest in the taxation year, and

(ii) no election was made under paragraph (a) in respect of the participating interest by the taxpayer for a preceding taxation year, and

(c) in any other case, nil,

E is the total of all amounts each of which is the cost at which the taxpayer acquired the participating interest in the taxation year (otherwise than because of an acquisition deemed to arise because of subsection 128.1(4) or 149(10)),

F is

(a) if the taxpayer held the participating interest at the beginning of the taxation year, the fair market value at that time of the participating interest (determined before taking into account any amount payable at that time from the non-resident entity in respect of the participating interest), and

(b) in any other case, nil, and

G is

(a) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the preceding taxation year of the taxpayer, the amount that would be deductible under subparagraph (4)(a)(ii) in computing the taxpayer's income for that preceding taxation year in respect of the participating interest if that subparagraph were read without reference to clause (4)(a)(ii)(A), and

(b) in any other case, nil.

**“readily obtainable
fair market value”**

**« juste valeur
marchande
vérifiable »**

5

“readily obtainable fair market value”, if any, at any time of a particular participating interest in a non-resident entity held at that time by a taxpayer, means the fair market value at that time of the participating interest if

(a) in respect of the particular participating interest

15

(i) there is a regularly published price of the amount (or of the average of the amounts each of which is the amount) at which participating interests that are identical to the particular participating interest last traded on a prescribed stock exchange on each of the latest 10 consecutive trading days of the participating interests on that stock exchange in the 30-day period that begins before the day that includes that time,

(ii) the particular participating interest would, at that time, be an arm’s length interest of the taxpayer if the definition “arm’s length interest” were read without reference to paragraph (b) of that definition,

(iii) the identical participating interests are listed on that stock exchange throughout the period, in the taxpayer’s taxation year that includes that time, during which the taxpayer held the particular participating interest, and

(iii) there are at least 10 trading days of the identical participating interests on that stock exchange in the period that begins 30 days before that time; or

(b) in respect of the particular participating interest

(i) the participating interests in the non-resident entity that are identical to the particular participating interest have, throughout the period, in the taxpayer’s taxation year that includes that time, during which the taxpayer held the particular participating interest, conditions attached that require the non-resident entity to accept at the demand of the holders of the participating interests (or that require the holders of the participating interests to accept, at the demand of the non-resident entity), at a price determined and payable in accordance with the

conditions, the surrender in whole or in part of the participating interests, and

(ii) that price

(A) is determined by reference to the fair market value, at the time the participating interest is surrendered, of the property of the non-resident entity, and

(B) would have been acceptable to entities dealing at arm's length with one another.

“reconciliation amount”

« montant de rapprochement »

“reconciliation amount”, at a particular time in a taxation year of a taxpayer in respect of a participating interest of the taxpayer, means the amount (including a negative amount) determined at the particular time by the formula

$$A - B$$

where

A is the amount determined by the formula

$$C - D$$

where

C is the amount that would be the cost at the particular time of the participating interest to the taxpayer if this Act were read without reference to this section (other than paragraph (2)(a)), and

D is

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, the cost at the particular time to the taxpayer of the participating interest, and

(b) in any other case, the taxpayer's proceeds of disposition from the last disposition in the taxation year by the taxpayer of the participating interest,

B is the amount determined by the formula

$$(E + F) - G$$

where

5

E is the total of all amounts each of which is an amount, in respect of the participating interest, that is deducted, or that would if this Act were read without reference to subsection (20) have been deducted, under subsection (4) in computing the taxpayer's income for 10

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a taxation year (in this definition referred to as the "preceding taxation year") of the taxpayer that precedes the taxation year, and 15

(b) in any other case, the taxation year or a preceding taxation year, 20

F is the total of all amounts each of which is an amount, in respect of the participating interest, deducted under paragraph 94.4(2)(a) in computing the taxpayer's income for 25

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and

(b) in any other case, the taxation year or a preceding taxation year, and 30

G is the total of all amounts each of which is an amount, in respect of the participating interest, that is included, or that would if this Act were read without reference to subsection (20) have been included, under subsection (4) in computing the taxpayer's income for 35

(a) if paragraph (12)(a) deems the taxpayer to have acquired the participating interest at a time in the taxation year, a preceding taxation year, and 40

(b) in any other case, the taxation year or a preceding taxation year.

“tracking entity”**« entité de référence »**

“tracking entity”, in respect of a particular participating interest of a taxpayer in a particular non-resident entity at a particular time, means the particular non-resident entity if 5

(a) the tracked properties described in paragraph (9)(d) in respect of the participating interest are at that time owned by the particular non-resident entity, and 10

(i) the total fair market value at that time of those tracked properties is less than 90% of the total fair market value at that time of all property owned at that time by the particular non-resident entity, and 15

(ii) the total fair market value at that time of those tracked properties that are at that time investment property exceeds 50% of the total fair market value at that time of those tracked properties; or 20

(b) any tracked property described in paragraph (9)(d) in respect of the participating interest is not at that time owned by the particular non-resident entity, the particular non-resident entity (or an entity with which the particular non-resident entity does not deal at arm’s length) owns property that is at that time investment property, and it is reasonable to conclude that that investment property (or property that may be substituted for that investment property) may be used, or give rise to property used, to satisfy, directly or indirectly, the right referred to in paragraph (9)(d) in respect of the particular participating interest. 25 30

“trading day”**« jour de bourse »**

“trading day”, of a participating interest on a prescribed stock exchange, means a day on which the participating interest trades on that stock exchange. 35

Rules of application

(2) In this section,

(a) identical participating interests held by a taxpayer are deemed to be disposed of in the order in which they were acquired by the taxpayer, determined without reference to any other provision of this Act; 40 45

(b) subsection 94.1(2) applies;

(c) in applying paragraph (a) of the definition “readily obtainable fair market value” in respect of a particular participating interest, in a non-resident entity, held by a taxpayer in a taxation year, where participating interests, in the non-resident entity, that are identical to the particular participating interest are listed on more than one prescribed stock exchange, the references in that paragraph to a prescribed stock exchange shall be read as a reference to

(i) if the taxpayer so elects, by notifying the Minister in writing in the taxpayer’s return of income for that taxation year or a preceding taxation year, the prescribed stock exchange identified by the taxpayer in that election, and

(ii) if the taxpayer has not filed an election in accordance with subparagraph (i) or if participating interests that are identical to the particular participating interest are no longer listed on the stock exchange identified in the election referred to in subparagraph (i), the prescribed stock exchange chosen by the Minister;

(d) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if

(i) subsection (3) applied, because of an election under paragraph (3)(b), for a taxation year (referred to in this paragraph as the “preceding taxation year”) that ended before the particular taxation year of the taxpayer in respect of the participating interest (or in respect of any other participating interests, in the non-resident entity, that are identical to the participating interest), and

(ii) subsection (3) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the participating interest (or in respect of any of the other participating interests);

(e) paragraph (3)(b) does not apply to a taxpayer for a particular taxation year in respect of a participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer if the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the Minister to determine whether the participating interest has a readily obtainable fair market value and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand;

(f) in applying subparagraph (4)(a)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that paragraph to the expression “as income from property from a property that is the participating interest” is to be read as a reference to the expression “as income from property that is a source outside Canada that is the participating interest”, if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year; and

(g) in applying subparagraph (4)(b)(i) to a taxpayer, that is a trust, for a particular taxation year of the taxpayer and in respect of a participating interest of the taxpayer in a non-resident entity, the reference in that paragraph to the expression “a capital gain for the year” is to be read as a reference to the expression “a capital gain for the year from a source outside Canada and”, if the portion of the net accounting income of the non-resident entity, from sources outside Canada, for its last taxation year that ends in the particular taxation year exceeds 90% of the total net accounting income of the non-resident entity for that last taxation year.

Application of mark-to-market method

(3) Subject to paragraphs (2)(d) and (e) and (5)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a participating interest held in the particular taxation year by the taxpayer (and in respect of any other participating interests that are identical to the participating interest and that are held by the taxpayer in the particular taxation year)

(a) if paragraph (11)(a) applies to the taxpayer for the particular taxation year in respect of the participating interest; or

(b) if

(i) subsection (9) or 94.1(3) applies to the taxpayer for the particular taxation year in respect of the participating interest,

(ii) the participating interest has, at all times in the particular taxation year at which the taxpayer held the participating interest, a readily obtainable fair market value,

(iii) the taxpayer has elected that this subsection apply in respect of the participating interest by notifying the Minister in writing in the taxpayer's return of income for

(A) the first taxation year of the taxpayer in which subsection (9) or 94.1(3), as the case may be, applies to the taxpayer in respect of the participating interest (or any of the other participating interests), or

(B) the first taxation year of the taxpayer for which 94.1(3) applies to the taxpayer in respect of the participating interest (or any of the other participating interests) and that immediately follows a taxation year of the taxpayer for which subsection (9) applied to the taxpayer in respect of the participating interest (or any of the other participating interests), and

(iv) subsection 94.3(3) has never applied to the taxpayer for a taxation year in respect of the participating interest (or any of the other participating interests).

**Income inclusion —
mark-to-market
regime**

(4) If subsection (3) applies to a taxpayer for a taxation year of the taxpayer in respect of a participating interest in a non-resident entity, this subsection applies and in computing the taxpayer's income for the taxation year in respect of the participating interest

(a) where subsection (20) does not apply for the taxation year in respect of the participating interest,

(i) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(ii) there may be deducted, as a loss from property,

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest; and

(b) where subsection (20) applies for the taxation year in respect of the participating interest,

(i) the taxpayer is deemed to have a capital gain for the year from the disposition of capital property, that is the participating interest, in the taxation year equal to the amount, if any, by which the total of

(A) the positive amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(B) the positive amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(C) the absolute value of the negative amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(ii) the taxpayer is deemed to have a capital loss for the taxation year from the disposition of capital property, that is the participating interest, in the taxation year equal to

(A) if the participating interest was deemed by paragraph (11)(b) to be a participating interest in an entity for the year, nil, and

(B) in any other case, the amount, if any, by which the total of

(I) the absolute value of the negative amount, if any, determined by the mark-to-market formula for the taxation year in respect of the participating interest, and

(II) the absolute value of the negative amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2)

exceeds

(III) the positive amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for

the deferral amount in respect of the participating interest is 2).

Non-resident periods excluded

5

(5) If a taxpayer is non-resident at any time in a taxation year of the taxpayer

(a) in applying subsection (4) and the definition “mark-to-market formula” (other than the description of D in that definition) in respect of a participating interest of the taxpayer, the taxation year is deemed to be the period, if any, that begins at the first time in the taxation year at which the taxpayer is resident in Canada and ends at the last time in the taxation year at which the taxpayer is resident in Canada; 10 15

(b) except for the purposes of subsection (4) and paragraph (c), subsection (3) does not apply to the taxpayer at that time; and

(c) where the taxpayer is an individual (other than a trust) who was non-resident throughout a particular period that is within a taxation year (determined under paragraph (a)) of the taxpayer, at any time in the particular period the individual holds a participating interest in a non-resident entity, and subsection (3) applies to the individual throughout the particular period in respect of the participating interest, 20 25

(i) for the purpose of section 114, the income or loss of the individual in respect of the participating interest for the particular period shall be determined without reference to this section, and 30

(ii) in computing the amount determined under paragraph 114(a) in respect of the individual for the taxation year

(A) there shall be deducted any amount that would be included under subparagraph (4)(a)(i) in computing the individual’s income in respect of the participating interest for the particular period if 35

(I) the value of D in the mark-to-market formula for the taxation year in respect of the participating interest were nil, 40
and

(II) the particular period were a taxation year, and

(B) there shall be added any amount that would be deductible under subparagraph (4)(a)(ii) in computing the individual’s income in respect of the participating interest for the particular period if 45

(I) the value of D in the mark-to-market formula for the taxation year in respect of the participating interest were nil, and

(II) the particular period were a taxation year.

5

Foreign partnership

— member

becoming resident

10

(6) If, at a particular time in a fiscal period of a partnership, a person resident in Canada becomes a member of the partnership, or a person who is a member of the partnership becomes resident in Canada, and immediately before the particular time no member of the partnership is resident in Canada,

15

(a) all amounts determined under this section shall be determined as if that fiscal period began at the first time in that fiscal period (determined without reference to this paragraph) at which a member of the partnership was resident in Canada;

20

(b) for the purpose of the definition “deferral amount”, as it applies in respect of dispositions that occur after the particular time and before the first subsequent time to which this subsection applies in respect of the partnership, subsection (4) is deemed not to have applied to the partnership for any preceding fiscal period; and

25

(c) where a negative deferral amount would, if this Act were read without reference to this paragraph, be determined in respect of a participating interest held by the partnership immediately before the particular time, the deferral amount in respect of the interest is deemed to be nil.

30

Foreign partnership

— member ceasing

to be resident

35

(7) If, at a particular time in a fiscal period of a partnership, a person resident in Canada ceases to be a member of the partnership, or a person who is a member of the partnership ceases to be resident in Canada and immediately after the particular time no member of the partnership is resident in Canada, all amounts determined under this section shall be determined as if that fiscal period ended at the last time in that fiscal period (determined without reference to this subsection) at which a member of the partnership was resident in Canada.

40

45

Application of subsections (6) and (7)

- (8) In subsections (6) and (7) and this subsection, 5
- (a) if it can reasonably be considered that one of the main reasons that a member of a partnership is resident in Canada is to avoid the application of subsection (6) or (7), the member is deemed not to be resident in Canada; and 10
- (b) if a particular partnership is a member of another partnership at any time,
- (i) each person or partnership that is at that time a member of the particular partnership is deemed to be at that time a member of the other partnership, 15
- (ii) each person or partnership that becomes at that time a member of the particular partnership is deemed to become at that time a member of the other partnership, and 20
- (iii) each person or partnership that ceases at that time to be a member of the particular partnership is deemed to cease at that time to be a member of the other partnership. 25

Tracking interests

- (9) This subsection applies to a taxpayer (other than an exempt taxpayer) for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests that are identical to the particular participating interest and that are held by the taxpayer in the particular taxation year) only if 30
- (a) subsection 94.1(3) does not apply to the taxpayer for the particular taxation year in respect of the particular participating interest; 35
- (b) at the end of a taxation year of the non-resident entity that ends in the particular taxation year, the particular participating interest 40
- (i) is held by the taxpayer, and 45
- (ii) either
- (A) is not an exempt interest in the non-resident entity, or

(B) would not be such an exempt interest if the definition “exempt interest” in subsection 94.1(1) were read without reference to subparagraph (a)(i) or (ii) of that definition;

(c) at the end of that taxation year of the non-resident entity, it is a tracking entity in respect of the particular participating interest;

(d) at any time in the particular taxation year, the amount of any payment (under a right to receive, in any manner whatever and from any entity, amounts in respect of the particular participating interest or any identical interests), or the value of such a right, is, directly or indirectly, determined primarily by one or more of the following criteria in respect of one or more properties (such property or properties together referred to, in this subsection and the definition “tracking entity”, as “tracked property” or “tracked properties”):

(i) production from the property, use of the property, gains from the disposition of the property, profits from the disposition of the property, fair market value of the property,

(ii) income from the property, profits from the property, revenue from the property, cash flow from the property, or

(iii) any other criterion similar to a criterion referred to in either of subparagraphs (i) or (ii); and

(e) throughout each taxation year of the non-resident entity that ends in the particular taxation year, all or substantially all of the fair market value of the tracked property cannot be attributed, either directly or indirectly, to the fair market value of property

(i) that is a share or shares of the capital stock of a corporation that is at that time a particular foreign affiliate of the taxpayer that if held at that time by the taxpayer would be

(A) a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) of the taxpayer in the particular foreign affiliate of the taxpayer, and

(B) throughout the period, in the particular taxation year, that the taxpayer held the share or shares, a participating interest of the taxpayer in a qualifying entity, and

(ii) that is not at that time tracked property in respect of a participating interest in a non-resident entity of an entity that is not related to the taxpayer.

Treatment of foreign insurance policies

(10) This subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of an interest in an insurance policy, if 5

(a) the taxpayer is not an exempt taxpayer for the particular taxation year;

(b) the taxpayer holds, at any time in the particular taxation year, an 10
interest in the insurance policy; and

(c) the insurance policy is not an insurance policy issued by an insurer in the course of carrying on an insurance business in Canada, the income from which is subject to tax under this Part. 15

Treatment of foreign insurance policies

(11) If subsection (10) applies to a taxpayer for a particular taxation 20
year of the taxpayer in respect of an interest in an insurance policy

(a) subject to paragraph (c), this paragraph applies to the taxpayer for the particular taxation year in respect of the interest, and no amount shall be included or deducted, as the case may be, under section 12.2, 25
paragraphs 56(1)(d) and (j) and 60(a) and (s) and sections 138.1 and 148 in respect of the interest for the purpose of computing the taxpayer's income for the particular taxation year;

(b) subject to paragraph (c), in applying subsections (1) to (4) and 30
paragraph (d.1) of the definition "specified foreign property" in subsection 233.3(1) to the taxpayer in respect of the interest for the particular taxation year,

(i) the interest is deemed at each time in the particular taxation 35
year that it is held by the taxpayer to be a participating interest in a non-resident entity, and

(ii) the value of D in the mark-to-market formula for the taxation 40
year in respect of the participating interest is deemed to be nil;

(c) paragraphs (a) and (b) do not apply to a taxpayer for a taxation year in respect of an insurance policy if

(i) the taxpayer is an individual and the interest in the policy was 45
acquired by the individual more than 60 months before the individual became resident in Canada unless, after the day that is 60 months before the day that the individual became resident in

Canada, the individual paid premiums in respect of the policy that are in excess of the level that can reasonably be considered to have been contemplated at the time the first interest in the policy was acquired,

(ii) under the terms and conditions of the insurance policy, the taxpayer is entitled to receive only benefits payable as a consequence of the occurrence of risks insured under the policy, an experience rated refund of premiums for a year or a return of premiums previously paid upon the surrender, cancellation or termination of the insurance policy, or

(iii) the taxpayer can establish to the satisfaction of the Minister that

(A) the interest in the policy was, on the anniversary day (as defined in subsection 12.2(11)) of the policy that occurs in the taxation year, an exempt policy, or

(B) the taxpayer has included in computing the taxpayer's income for the particular year the amount, if any, required under section 12.2 to be included in computing the taxpayer's income for that year in respect of the interest;

(d) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the end of a particular taxation year is deemed to have been acquired by the taxpayer at the beginning of the following taxation year at a cost equal to the fair market value at the end of the particular taxation year of the interest if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular year, and

(ii) paragraphs (a) and (b) apply to the taxpayer in respect of the interest for the taxpayer's following taxation year;

(e) for the purpose of subsections (1) and (4), an interest in an insurance policy held by a taxpayer at the beginning of a particular taxation year is deemed to have been disposed of by the taxpayer at the end of the taxpayer's preceding taxation year for proceeds of disposition equal to its fair market value at the end of that preceding taxation year if

(i) paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and

(ii) paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer's preceding taxation year;

(f) for the purposes of this subsection and subsections (1) and (4), the fair market value of an interest in an insurance policy, the proceeds of disposition of an interest in an insurance policy and amounts paid to a beneficiary in respect of an interest in an insurance policy are each determined without reference to benefits paid, payable or anticipated to be payable, under the insurance policy as a consequence only of the occurrence of the risks insured under the insurance policy;

(g) for the purposes of this subsection and subsections (1) and (4),

(i) an interest in an insurance policy is deemed to have been acquired by the taxpayer in a particular taxation year (notwithstanding that the interest was held by the taxpayer at the end of the preceding taxation year), where the taxpayer made a payment described in subparagraph (ii) in respect of a premium or a loan under the policy in the particular taxation year,

(ii) the cost to the taxpayer of an interest in an insurance policy acquired in a particular taxation year is the total of all amounts each of which is

(A) the amount of a premium paid by the taxpayer in the particular taxation year under the insurance policy to the extent that it cannot be refunded (otherwise than on termination or cancellation of the policy) and is not a payment in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition "premium" in subsection 148(9),

(B) the amount of a payment made by the taxpayer in the particular taxation year in respect of the principal amount of a loan made under the insurance policy in any taxation year to the extent that the loan was included in determining the value of C in the mark-to-market formula for the taxation year, in which the loan was made, in respect of the participating interest, and

(C) an amount (other than amount described in clause (A) or (B)) paid by the taxpayer to acquire the interest from an entity other than the insurer that issued the policy;

(h) if, under paragraph (d), a taxpayer is deemed to have acquired an interest in an insurance policy at the beginning of a taxation year (referred to in this paragraph as the "acquisition year"), the taxpayer may add to the cost of that interest, the amount, if any, by which

(i) the total amount of premiums paid by the taxpayer before the beginning of the acquisition year in respect of that interest at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest (to the extent that the premiums paid cannot be refunded otherwise than on termination or cancellation of the policy and are not premiums paid in respect of a benefit described in subparagraphs (c)(i) to (vii) of the definition “premium” in subsection 148(9))

exceeds

(ii) the total of the fair market value, at the beginning of the acquisition year, of that interest and the total of the amounts received by the taxpayer before the beginning of the acquisition year under the policy at a time at which the taxpayer was resident in Canada and not an exempt taxpayer for the year in respect of the interest;

(i) for the purpose of subsections (1) and (4), if the amount determined under subparagraph (h)(ii) exceeds the amount determined under subparagraph (h)(i) in respect of an interest in an insurance policy of a taxpayer described in paragraph (h), the amount of the excess shall be added in computing the taxpayer’s proceeds of disposition of that interest for the taxation year in which the taxpayer disposes of the interest otherwise than because of paragraph (e); and

(j) where an interest in an insurance policy is held by a taxpayer at the beginning of a particular taxation year, paragraphs (a) and (b) do not apply to the taxpayer in respect of the interest for the particular taxation year, and paragraphs (a) and (b) applied to the taxpayer in respect of the interest for the taxpayer’s preceding taxation year, the interest is deemed to have been acquired by the taxpayer at the beginning of the particular taxation year at a cost equal to the amount, if any, by which

(i) the total of

- (A) the fair market value, at the end of the taxpayer’s preceding taxation year, of the interest, and
- (B) the amount that would be determined under subparagraph (4)(a)(ii) in respect of the interest in respect of the taxpayer for the taxpayer’s preceding taxation year if that subparagraph were read without reference to its clause (A),

exceeds

- (ii) the amount determined under paragraph (i) in respect of the interest in respect of the taxpayer.

5

Change of status

(12) If a participating interest in a non-resident entity is held by a taxpayer at a time that is the beginning of a taxation year, subsection (4) applied for the purpose of computing the taxpayer's income for the preceding taxation year in respect of the participating interest, and that subsection does not apply for the purpose of computing the taxpayer's income for the taxation year in respect of the participating interest (otherwise than because the taxpayer became an exempt taxpayer or ceased to reside in Canada),

15

(a) subject to paragraph (c), the taxpayer is deemed to have acquired the participating interest at that time at a cost equal to its fair market value at that time;

20

(b) where the participating interest is capital property of the taxpayer, in computing the adjusted cost base after that time to the taxpayer of the interest

- (i) there shall be deducted

25

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the mark-to-market formula for the taxation year in respect of the participating interest, the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

30

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest, and

35

- (ii) there shall be added

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and

40

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest; and

45

- (c) where paragraph (b) does not apply,

(i) there shall be deducted in computing the cost to the taxpayer of the participating interest

(A) except where the taxpayer has made an election in respect of the participating interest under subparagraph (a)(iii) of the description of D in the mark-to-market formula for the taxation year in respect of the participating interest, the lesser of 5

(I) the product of the positive deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and 10

(II) the cost to the taxpayer of the participating interest, determined without reference to this subparagraph, and 15

(B) the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be included in computing the taxpayer's income for the taxation year in respect of the participating interest the amount, if any, by which 20

(A) the amount determined under subclause (i)(A)(I) in respect of the participating interest 25

exceeds

(B) the amount determined under subclause (i)(A)(II) in respect of the participating interest, and 30

(iii) there shall be added in computing the cost to the taxpayer of the participating interest

(A) the product of the absolute value of the negative deferral amount, if any, in respect of the participating interest and the gross-up factor for the deferral amount, and 35

(B) the positive reconciliation amount, if any, at that time in respect of the participating interest. 40

Cost of participating interest

(13) If a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a taxation year and subsection (4) applies for the purpose of computing the taxpayer's income for the taxation year in respect of the participating interest, in 45

determining the taxpayer's cost of the participating interest immediately before the particular time

(a) if the participating interest was held by the taxpayer at the beginning of the taxation year, its cost to the taxpayer immediately before the particular time is deemed to be equal to the fair market value at the beginning of the taxation year of the participating interest; and

(b) in any other case, its cost to the taxpayer immediately before the particular time is deemed to be equal to the amount that would be its cost to the taxpayer at the particular time if this Act were read without reference to this section (other than subsection (2)).

**Deferral amount
where same interest
reacquired**

(14) Subject to subsections (15) to (18), if a taxpayer disposes of a participating interest in an entity at any time in a taxation year of the taxpayer and subsection (4) applies for the purpose of computing the taxpayer's income for the year in respect of the participating interest, in applying subsection (4) to a disposition after that time by the taxpayer of the participating interest, the deferral amount of the taxpayer in respect of the participating interest is nil.

**Deferral amount —
fresh start re change
of status of entity**

(15) If a participating interest is deemed by paragraph (12)(a) to have been acquired at a particular time in a taxation year by a taxpayer, in applying subsection (4) to a disposition after the taxation year by the taxpayer of the participating interest and to an election made after the taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the mark-to-market formula for the taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition "deferral amount", as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that began before the particular time; and

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time.

**Deferral amount —
fresh start after
emigration of
taxpayer**

5

(16) If a taxpayer ceases at a particular time to be resident in Canada, in applying subsection (4) to a disposition after the particular time by the taxpayer of a participating interest and to an election made after the particular time by the taxpayer under subparagraph (a)(iii) of the description of D in the mark-to-market formula for a taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined 10

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition “deferral amount”, as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that began before the particular time; and 15

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular time. 20

**Deferral amount —
fresh start on
becoming an exempt
taxpayer**

25

(17) If a taxpayer is an exempt taxpayer for a particular taxation year of the taxpayer because of the application of paragraph (a) or (b) of the definition “exempt taxpayer” in subsection 94.1(1), and the taxpayer was not an exempt taxpayer for the taxation year of the taxpayer that preceded the particular taxation year, in applying subsection (4) to a disposition after the particular taxation year by the taxpayer of a participating interest and to an election made after the particular taxation year by the taxpayer under subparagraph (a)(iii) of the description of D in the mark-to-market formula for a taxation year in respect of the participating interest, the deferral amount of the taxpayer in respect of the participating interest shall be determined 30 35

(a) for the purpose of subparagraph (a)(iii) of the description of B in the definition “deferral amount”, as if subsection (4) had not applied to the taxpayer in respect of the participating interest for taxation years that ended before the particular taxation year; and 40

(b) without reference to the application of subsection (14) with regard to dispositions that occurred before the particular taxation year. 45

Superficial dispositions

(18) If a taxpayer disposes of a participating interest, the deferral amount in respect of the participating interest would otherwise be a negative amount, and the disposition would, if the participating interest were a capital property and a loss arose on the disposition, give rise to a superficial loss (within the meaning that would be assigned by section 54 if the definition “superficial loss” in that section were read without the reference to subsection 40(3.4) in paragraph (h) of that definition),

(a) except for the purpose of applying paragraph (b) in respect of the disposition, the deferral amount of the taxpayer in respect of the participating interest is deemed to be nil; and

(b) the deferral amount of the taxpayer in respect of the property that would be the substituted property referred to in that definition if the assumptions described in this subsection applied is deemed to be equal to the deferral amount of the taxpayer in respect of the participating interest.

Determination of capital dividend account

(19) If an amount has been included or deducted under paragraph (4)(a) in computing the income of a corporation resident in Canada for a taxation year in respect of a participating interest, in computing the capital dividend account of the corporation

(a) the corporation is deemed to have

(i) a capital gain from a disposition at the end of the taxation year of property equal to twice the amount of the taxable capital gain determined under subparagraph (ii), and

(ii) a taxable capital gain from the disposition at the end of the taxation year of property equal to the lesser of

(A) the positive amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and

(B) the amount included in computing the income of the corporation for the taxation year under subsection (4); and

(b) the corporation is deemed to have

(i) a capital loss from a disposition at the end of the taxation year of property equal to twice the amount of the allowable capital loss determined under subparagraph (ii), and

(ii) an allowable capital loss from the disposition at the end of the taxation year of property equal to the lesser of 5

(A) the absolute value of the negative amount, if any, that is the value of D in the mark-to-market formula for the taxation year in respect of the participating interest (where the gross-up factor for the deferral amount in respect of the participating interest is 2), and 10

(B) the amount deducted in computing the income of the corporation for the taxation year under subsection (4). 15

Application of paragraph (4)(b)

(20) This subsection applies for a taxation year of a taxpayer in respect of a participating interest, in a particular non-resident entity, held in the taxation year by the taxpayer, if 20

(a) the participating interest would, if paragraph 39(1)(a) and the definition “inventory” in subsection 248(1) were read without reference to this section, be a capital property of the taxpayer at the last time in the taxation year at which the taxpayer held the participating interest; and 25

(b) all or substantially all of the amount determined under the mark-to-market formula for the taxation year in respect of the participating interest can be attributed to 30

(i) capital gains or capital losses from the disposition of capital property (other than a participating interest in a foreign investment entity) by the particular non-resident entity or by any foreign investment entity in which the particular non-resident entity has a direct or indirect interest, and 35

(ii) increases or decreases in the fair market value of capital property (other than a participating interest in a foreign investment entity) of the particular non-resident entity or of any foreign investment entity in which the particular non-resident entity has a direct or indirect interest. 40

Disposition of interest — reconciliation

(21) If a taxpayer's participating interest in a non-resident entity is disposed of by the taxpayer at a particular time in a particular taxation year, and subsection (4) applies for the purpose of computing the taxpayer's income for the particular taxation year in respect of the participating interest, in computing that income

(a) where subsection (20) does not apply for the particular taxation year, and has never applied for a preceding taxation year, in respect of the participating interest,

(i) there may be deducted, as a loss from property from a property that is the participating interest, the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) there shall be included, as income from property from a property that is the participating interest, the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest; and

(b) in any other case,

(i) the taxpayer is deemed to have a capital loss for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the positive reconciliation amount, if any, at that time in respect of the participating interest, and

(ii) the taxpayer is deemed to have a capital gain for the particular taxation year from the disposition of capital property that is the participating interest in the particular taxation year equal to the absolute value of the negative reconciliation amount, if any, at that time in respect of the participating interest.

Foreign Investment Entities — Accrual

Definitions

94.3 (1) The definitions in subsections 94.1(1) and 94.2(1), and the following definitions, apply in this section.

“fresh-start year”

«*année de
redémarrage*»

“fresh-start year”, of a non-resident entity in respect of a taxpayer, means 5
a taxation year of the non-resident entity

(a) that ends in a taxation year of the taxpayer that begins after 2002 if, at the end of the taxation year of the non-resident entity, the non-resident entity is a foreign investment entity and the 10
taxpayer holds a participating interest, other than an exempt interest, in the non-resident entity; and

(b) that begins immediately after a preceding taxation year of the non-resident entity at the end of which the non-resident entity was 15
not a foreign investment entity or the taxpayer did not hold a participating interest in the non-resident entity.

“income allocation”

«*revenu attribué*»

20

“income allocation”, of a particular taxpayer in respect of a particular participating interest, in a non-resident entity, held by the particular taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount 25
determined by the formula

$$A \times B/C$$

where

30

A is the amount that would be the income of the non-resident entity for the particular taxation year if

(a) except for the purposes of section 91, subparagraph (2)(b)(ii), 35
subsection 107.4(1) and paragraph (f) of the definition “disposition” in subsection 248(1), the non-resident entity had been a taxpayer resident in Canada throughout its existence,

(b) each property held by the non-resident entity at the particular 40
time that is the beginning of a fresh-start year of the non-resident entity in respect of the particular taxpayer had been

(i) disposed of by the non-resident entity immediately before the particular time for proceeds equal to its fair market value 45
at the particular time, and

(ii) reacquired by the non-resident entity at the particular time at a cost equal to that fair market value,

(c) for a fresh-start year of the non-resident entity in respect of the particular taxpayer and for each following taxation year of the non-resident entity, each deduction in computing the non-resident entity's income that is contingent on a claim by the non-resident entity had been claimed by the non-resident entity to the extent, and only to the extent, designated by the particular taxpayer in prescribed form filed with the Minister with the particular taxpayer's return of income for the particular taxpayer's taxation year in which that fresh-start year or the following year, as the case may be, ends,

(d) the non-resident entity had deducted the greatest amounts that it could have claimed or deducted as a reserve under sections 20, 138 and 140 for its taxation year that precedes a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(e) in applying sections 37, 65 to 66.4, and 66.7, the non-resident entity had not existed before a fresh-start year of the non-resident entity in respect of the particular taxpayer,

(f) this Act were read without reference to subsections 20(11) and (12) and to subsections 104(4) to (6),

(g) in the case where the particular taxpayer is a corporation resident in Canada, dividends received by the non-resident entity in the particular taxation year from a foreign affiliate of the particular taxpayer were included in computing the income of the non-resident entity for the particular taxation year only where

(i) the particular taxpayer did not have a qualifying interest (within the meaning assigned by paragraph 95(2)(m)) in the foreign affiliate at the time the dividends were received, or

(ii) taking into account the application of paragraphs (a) and (i), subsection 94.2(4) applied for the purpose of computing the non-resident entity's income for the particular taxation year in respect of the non-resident entity's participating interest in the foreign affiliate,

(h) where the non-resident entity holds at any time in the particular taxation year a participating interest in another non-resident entity, the description of D in the definition "mark-to-market formula" did not apply in respect of that interest,

(i) the expression “controlled foreign affiliate of the taxpayer” in paragraph (a) of the definition “exempt interest” referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the non-resident entity,

5

(j) the amount included in computing the non-resident entity’s income for the particular taxation year in respect of capital gains were the amount, if any, by which the amount determined under subparagraph 3(b)(i) exceeds the amount determined under subparagraph 3(b)(ii) in respect of the non-resident entity for the particular taxation year,

10

(k) the amount deducted in computing the non-resident entity’s income for the particular taxation year in respect of capital losses (other than business investment losses) were the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, and

15

20

(l) the amount deducted in computing the non-resident entity’s income for the particular taxation year in respect of business investment losses were the amount of its allowable business investment losses for the particular taxation year;

25

B is the amount that is the fair market value, at the end of the particular taxation year, of the particular participating interest; and

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition “participating interest” were read without reference to paragraph (d) of that definition).

30

“loss allocation”

35

« *pertes attribuées* »

“loss allocation”, of a particular taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the amount determined by the formula

40

$$(A - B) \times C/D$$

45

where

A is the total of all amounts each of which is

(a) an amount that would, if paragraphs (a) to (i) of the description of A in the definition “income allocation” applied in respect of the particular taxpayer and the participating interest, be a loss of the non-resident entity for the particular taxation year from a business or property,

5

(b) the amount, if any, by which the amount determined under subparagraph 3(b)(ii) exceeds the amount determined under subparagraph 3(b)(i) in respect of the non-resident entity for the particular taxation year, or

10

(c) an allowable business investment loss of the non-resident entity for the particular taxation year;

B is the amount that would, if paragraphs (a) to (i) of the description of A in the definition “income allocation” applied in respect of the particular taxpayer and the participating interest, be determined under paragraph 3(c) in respect of the entity for the particular taxation year;

20

C is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest; and

D is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition “participating interest” were read without reference to paragraph (d) of that definition).

25

**“specified tax
allocation”**

30

*« impôt déterminé
attribué »*

“specified tax allocation”, of a taxpayer in respect of a participating interest, in a non-resident entity, held by the taxpayer at the end of a particular taxation year of the non-resident entity that ends in a taxation year of the taxpayer, means the total of all amounts each of which is the amount determined, in respect of the particular taxation year, by the formula

35
40

$$A \times (B/C) \times D$$

where

45

A is

(a) if that taxation year of the taxpayer begins after 2002, the income or profits tax paid by the non-resident entity in respect of the particular taxation year, to the extent that that tax can reasonably be considered to be in respect of the income or profits of the non-resident entity included in computing the amount determined in respect of the non-resident entity and the participating interest under the description of A in the definition “income allocation” for the particular taxation year or any of the five taxation years of the non-resident entity that precede the particular taxation year and that end after 2002, and

(b) in any other case, nil;

B is the amount that is the fair market value, at the end of the particular taxation year, of the participating interest;

C is the fair market value, at the end of the particular taxation year, of all of the participating interests in the non-resident entity (other than an interest that would not be a participating interest, in the non-resident entity, if the definition “participating interest” were read without reference to paragraph (d) of that definition); and

D is the taxpayer’s relevant tax factor (as defined by subsection 95(1)) for that taxation year of the taxpayer.

Rules of application

(2) In this section,

(a) subsection 94.1(2) applies;

(b) subsection (3) does not apply to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests, in the non-resident entity, that are identical to the particular participating interest and that are held in the particular taxation year by the taxpayer) if

(i) subsection 94.2(3) or 94.2(9) applies to the taxpayer for the particular taxation year in respect of the particular participating interest,

(ii) the taxpayer is a foreign investment entity at the end of the particular taxation year,

(iii) the Minister sends a written demand to the taxpayer requesting additional information for the purpose of enabling the

Minister to determine whether an amount with respect to the particular participating interest would be required under subsection (4) to be added (or permitted under subsection (4) to be deducted) in computing the income of the taxpayer for the particular taxation year, and information satisfactory to the Minister to make the determination is not received by the Minister within 60 days (or within any longer period that is acceptable to the Minister) after the Minister sends the demand,

(iv) the particular participating interest is an interest that would not, at each time in the particular taxation year at which the taxpayer held the particular participating interest (or any of the other participating interests) and at which a taxation year of the non-resident entity ends, be a participating interest, in the non-resident entity, if the definition “participating interest” were read without reference to paragraph (d) of that definition,

(v) subsection (3)

(A) applied for a taxation year (referred to in this subparagraph as the “preceding taxation year”) that ended before the particular taxation year of the taxpayer in respect of the particular participating interest, and

(B) did not apply for a taxation year of the taxpayer that was after the preceding taxation year and before the particular taxation year in respect of the particular participating interest, or

(vi) the participating interest is a specified interest in a trust that is an exempt foreign trust because of paragraph (g) of the definition “exempt foreign trust” in subsection 94(1) and the trust holds, at any time in the particular taxation year, property in respect of which it has waived a right to receive an amount.

35

Where accrual method applies

(3) Subject to paragraph (2)(b), this subsection applies to a taxpayer for a particular taxation year of the taxpayer in respect of a particular participating interest, in a non-resident entity, held in the particular taxation year by the taxpayer (and in respect of any other participating interests, in the non-resident entity, that are held in the particular taxation year by the taxpayer and that are identical to the particular participating interest) if

45

(a) subsection 94.1(3) applies to the taxpayer for the particular taxation year in respect of the particular participating interest;

(b) the taxpayer has elected that this subsection apply in respect of the particular participating interest, by notifying the Minister in writing in the taxpayer's return of income filed on or before the taxpayer's filing-due date for the first taxation year of the taxpayer for which

5

(i) subsection 94.1(3) applies to the taxpayer in respect of the particular participating interest, or

(ii) subsection 94.2(9) does not apply to the taxpayer in respect of the particular participating interest and that immediately follows a taxation year for which subsection 94.2(9) applied to the taxpayer in respect of the particular participating interest;

(c) neither subsection 94.1(4) nor 94.2(3) applied to the taxpayer for a taxation year (referred to in this paragraph as the "preceding taxation year") that ended before the particular taxation year in respect of the particular participating interest, unless subsection 94.2(9) applied for that preceding taxation year to the taxpayer in respect of the particular participating interest (or any of the other participating interests);

(d) the particular participating interest is, at each time in the particular taxation year at which the taxpayer held the particular participating interest (or any of the other participating interests) and at which a taxation year of the non-resident entity ends, capital property of the taxpayer; and

(e) the taxpayer files, with the taxpayer's return of income filed on or before the taxpayer's filing-due date for the particular taxation year, prescribed information in prescribed form.

**Income inclusion or
deduction — accrual
method**

35

(4) If subsection (3) applies to a taxpayer resident in Canada for a particular taxation year of the taxpayer in respect of a participating interest in a non-resident entity, in computing the taxpayer's income for the particular taxation year

40

(a) there shall be added, as income from property from a property that is the participating interest, the positive amount, if any, determined by the formula

45

$$A - B - C - D$$

where

- A is the total of all amounts each of which is the taxpayer's income allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year, 5
- B is the total of all amounts each of which is the taxpayer's loss allocation in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year, 10
- C is the total of all amounts each of which is the specified tax allocation of the taxpayer in respect of the participating interest for each taxation year of the non-resident entity that ends in the particular taxation year, and 15
- D is the amount, if any, by which

- (i) the amount determined under subparagraph (b)(i) in respect of the taxpayer and the participating interest for the taxation year (referred to in this paragraph as the "preceding taxation year") of the taxpayer that immediately preceded the particular taxation year 20

25

exceeds

- (ii) the amount determined under subparagraph (b)(ii) in respect of the taxpayer and the participating interest for the preceding taxation year; and 30

30

(b) there may be deducted, as a loss from a property that is the participating interest, the lesser of

- (i) the absolute value of the negative amount, if any, determined by the formula in paragraph (a) in respect of the taxpayer and the participating interest for the particular taxation year, and 35

- (ii) the amount, if any, by which 40

40

- (A) the total of all amounts added under paragraph (a) in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year 45

45

exceeds

(B) the total of all amounts deductible under this paragraph in computing the taxpayer's income, from a property that is the participating interest, for a taxation year of the taxpayer that ended before the particular taxation year.

5

Adjusted cost base

(5) In computing the adjusted cost base to a taxpayer of a participating interest, in a non-resident entity, at any time

10

(a) there shall be added the total of all amounts each of which is

(i) the amount added, as income from a property that is the participating interest, under paragraph (4)(a) in computing the taxpayer's income for a taxation year of the taxpayer that ended before that time (or that would have been so added if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), and 15

(ii) the product obtained when the amount determined under paragraph (j) of the description of A in the definition "income allocation" in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount that is determined by the fraction B/C described in the formula in that definition and that was used in computing the taxpayer's income allocation in respect of the participating interest for the particular taxation year; and 20 25 30

(b) there shall be deducted the total of all amounts each of which is

(i) the amount deducted, as a loss from a property that is the participating interest, under paragraph (4)(b) in computing the taxpayer's income for a taxation year of the taxpayer that ended before that time (or that would have been so deducted if this Act were read without reference to subsection 56(4.1) and sections 74.1 to 75), 35 40

(ii) the product obtained when the amount determined under paragraph (k) of the description of A in the definition "income allocation" in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount that is determined by the fraction C/D described in the formula in the 45

definition “loss allocation” that was used in computing the taxpayer’s loss allocation in respect of the participating interest for the particular taxation year, and

(iii) the product obtained when the amount determined under paragraph (l) of the description of A in the definition “income allocation” in respect of the taxpayer and the participating interest for a particular taxation year of the non-resident entity that ended in a taxation year of the taxpayer that ended before that time and at the end of which particular taxation year the taxpayer held the participating interest is multiplied by the amount determined by the fraction C/D described in the formula in the definition “loss allocation” that was used in computing the taxpayer’s loss allocation in respect of the participating interest for the particular taxation year.

Foreign Investment Entities — Relief from Double Taxation

Definitions and rules of application

94.4 (1) In this section

(a) the definitions in subsection 94.1(1) apply;

(b) subsection 94.1(2) applies; and

(c) paragraph 94.2(2)(a) applies.

Prevention of double taxation — designated cost and mark-to-market regimes

(2) If one or more amounts become, at a particular time in a particular taxation year of a taxpayer that begins after 2002 or in a preceding taxation year of the taxpayer that begins after 2002, payable to the taxpayer from a particular entity or another entity in respect of a participating interest in the particular entity (other than an amount that is proceeds of disposition of the participating interest, or of a part of it, or that is included in the total determined under clause (4)(a)(i)(A) in respect of the taxpayer and the participating interest for any of those taxation years), and the taxpayer is at the particular time resident in Canada,

(a) there may be deducted in computing the taxpayer’s income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount that is in respect of any of those amounts payable and that is included (otherwise than because of variable C in applying the formula in the definition “mark-to-market formula” in subsection 94.2(1)) in computing the taxpayer’s income for any of those taxation years 5

exceeds

10

(B) the total of all amounts each of which is an amount that is in respect of the participating interest and that is deducted under this paragraph in computing the taxpayer’s income for any of those preceding taxation years, and 15

(ii) the amount, if any, by which the total of all amounts each of which is

(A) an amount, in respect of the participating interest, that is included, or that would if this Act were read without reference to subsection 94.2(20) have been included, under subsection 94.1(4) or 94.2(4) in computing the taxpayer’s income for any of those taxation years, or 20

25

(B) the amount, if any, by which all amounts each of which is an amount required by paragraph 94.3(5)(a) to be added in computing at the particular time the adjusted cost base to the taxpayer of the participating interest, 30

35

exceeds the total of all amounts each of which is an amount, in respect of the participating interest,

(C) required by paragraph 94.3(5)(b) or paragraph (4)(b) to be deducted in computing at the particular time the adjusted cost base to the taxpayer of the participating interest, 35

(D) that is deducted, or that would if this Act were read without reference to subsection 94.2(20) have been deducted, under subsection 94.2(4) in computing the taxpayer’s income for any of those preceding taxation years, or 40

(E) that is deducted under this paragraph in computing the taxpayer’s income for any of those preceding taxation years; and 45

(b) in computing the adjusted cost base to the taxpayer of the participating interest after the particular time there shall be deducted

the amount deducted under paragraph (a) in computing the taxpayer's income.

Foreign taxes paid

(3) If a particular amount is included in computing, in respect of a taxpayer, the amount determined under subparagraph (2)(a)(i) in respect of a participating interest, in a foreign investment entity (other than, where the taxpayer is a corporation, a foreign investment entity that is, at the time the particular amount was received by the taxpayer, a foreign affiliate of the taxpayer), of the taxpayer for a taxation year of the taxpayer, the taxpayer may deduct in computing the taxpayer's income for the taxation year the product obtained when the taxpayer's relevant tax factor (as defined by subsection 95(1)) for the taxation year is multiplied by the lesser of

(a) the amount of the non-business income tax (as defined in subsection 126(7)) paid by the taxpayer for the taxation year in respect of the particular amount, and

(b) 15% of the amount determined under subparagraph (2)(a)(ii) in respect of the taxpayer in respect of the participating interest for the taxation year.

Prevention of double taxation — accrual regime

(4) If one or more amounts become, at a particular time in a particular taxation year of a taxpayer that begins after 2002 or in a preceding taxation year of the taxpayer that begins after 2002, payable to the taxpayer from a particular entity or another entity in respect of a participating interest in the particular entity (other than an amount that is proceeds of disposition of the participating interest or a part of it), and the taxpayer is at the particular time resident in Canada,

(a) there may be deducted in computing the taxpayer's income for the particular taxation year the lesser of

(i) the amount, if any, by which

(A) the total of all amounts each of which is an amount that is in respect of any of those amounts payable and that is included (otherwise than because of variable C in applying the formula in the definition "mark-to-market formula" in subsection 94.2(1)) in computing the taxpayer's income for any of those taxation years

exceeds the total of all amounts each of which is an amount, that is in respect of the participating interest,

(B) that is deducted under this paragraph in computing the taxpayer's income for any of those preceding taxation years, 5

(C) that is deducted under paragraph (2)(a) in computing the taxpayer's income for any of those preceding taxation years,

(D) that is deductible under subsection 91(5) in computing the taxpayer's income for the particular taxation year or any of those preceding taxation years, or 10

(E) that is deductible under section 113 in computing the taxpayer's taxable income for the particular taxation year or 15 any of those preceding taxation years, and

(ii) the amount, if any, by which

(A) the total of all amounts each of which is an amount 20 required by paragraph 94.3(5)(a) to be added in computing at the particular time the adjusted cost base to the taxpayer of the participating interest,

exceeds the total of all amounts each of which is an amount 25

(B) required by paragraph 94.3(5)(b) to be deducted in computing at the particular time the adjusted cost base to the taxpayer of the participating interest, or 30

(C) that is deducted under this paragraph in respect of the participating interest in computing the taxpayer's income for any of those preceding taxation years; and

(b) in computing the adjusted cost base to the taxpayer of the participating interest after the particular time there shall be deducted 35 the amount deducted under paragraph (a) in computing the taxpayer's income.

(2) Subsection (1) applies to taxation years that begin after 2002, except that 40

(a) any election referred to in any of sections 94.1 to 94.3 of the *Income Tax Act*, as enacted by subsection (1), made by a taxpayer is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the taxpayer's filing-due date for 45

the taxpayer's taxation year that includes the day on which this Act is assented to; and

(b) for taxation years that begin before Announcement Date, subparagraph (a)(ii) of the definition "exempt interest" in subsection 94.1(1) of the *Income Tax Act*, as enacted by subsection (1), is to be read as follows:

"(ii) a qualifying entity, or"

17. (1) The portion of subsection 95(1) of the Act before the definition "active business" is replaced by the following:

Definitions re
foreign affiliates

10

95. (1) In this subdivision (other than in sections 94 to 94.4),

(2) The portion of the definition "controlled foreign affiliate" in subsection 95(1) of the Act before paragraph (a) is replaced by the following:

15

"controlled foreign
affiliate"

« *société étrangère
affiliée contrôlée* »

"controlled foreign affiliate", at any time of a taxpayer resident in 20
Canada, means a foreign affiliate of the taxpayer that is, at that time,
a controlled foreign affiliate of the taxpayer because of paragraph
94.1(2)(h) or that is, at that time, controlled by

(3) The formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following: 25

$$(A + A.1 + A.2 + B) - (D + E + F + G + H)$$

(4) The description of C in the definition "foreign accrual property income" in subsection 95(1) of the Act is repealed.

(5) The definition "relevant tax factor" in subsection 95(1) of the Act is replaced by the following:

30

“relevant tax factor”
« *facteur fiscal*
approprié »

“relevant tax factor”, of a person or partnership for a taxation year,
means

5

(a) in the case of a corporation, or of a partnership all the
members of which, other than non-resident persons, are
corporations, the quotient obtained by the formula

$$1/(A - B)$$

10

where

A is the percentage set out in paragraph 123(1)(a), and

15

B is

(i) in the case of a corporation, the percentage that is the
corporation’s general rate reduction percentage (as defined by
section 123.4) for the taxation year, and

20

(ii) in the case of a partnership, the percentage that would be
determined under subparagraph (i) in respect of the partnership
if the partnership were a corporation whose taxation year is the
partnership’s fiscal period; and

25

(b) in any other case, 2.2;

**(6) Subsection 95(2) of the Act is amended by adding the
following after paragraph (g.2):**

(g.3) if in a particular taxation year of a particular foreign affiliate of
a particular taxpayer, the particular foreign affiliate holds a
participating interest, in a particular non-resident entity (in this
paragraph as defined by subsection 94.1(1)), sections 94.1 to 94.4
apply to the particular foreign affiliate in respect of the participating
interest as if

30
35

(i) the particular foreign affiliate were a taxpayer resident in
Canada throughout the particular taxation year (other than for the
purposes of determining if the particular foreign affiliate is a
foreign affiliate of a taxpayer, if the particular foreign affiliate is
a non-resident entity, or if a participating interest in the particular
foreign affiliate is an exempt interest (in this paragraph as defined
by subsection 94.1(1), as modified by this paragraph) of a
taxpayer in a non-resident entity),

40

(ii) the expression “controlled foreign affiliate of the taxpayer” in paragraph (a) of the definition “exempt interest” in subsection 94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the particular foreign affiliate,

5

(iii) an exempt interest of the particular foreign affiliate in a non-resident entity included a participating interest

(A) that is held, in the particular taxation year, by the 10 particular foreign affiliate, and

(B) that is, throughout the particular taxation year, property used or held by the particular foreign affiliate principally for the purpose of gaining or producing income from a business 15 that is not an investment business,

(iv) in computing the income of the particular non-resident entity from a participating interest in another non-resident entity, the expression “controlled foreign affiliate of the taxpayer” in 20 paragraph (a) of the definition “exempt interest” in subsection 94.1(1) referred to a controlled foreign affiliate of the particular taxpayer and not to a controlled foreign affiliate of the particular non-resident entity,

25

(v) the definition “fresh-start year” in subsection 94.3(1) did not apply and as if a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the particular foreign affiliate, were a reference to a taxation year of the particular non-resident entity

30

(A) that ends in a taxation year of the particular foreign affiliate that begins after 2002,

(B) that begins immediately after a preceding taxation year of 35 the particular non-resident entity at the end of which

(I) the particular non-resident entity was not a foreign investment entity,

40

(II) the particular foreign affiliate did not hold a participating interest in the particular non-resident entity (other than an exempt interest), or

(III) the particular foreign affiliate was not a controlled 45 foreign affiliate of the particular taxpayer,

(C) at the end of which the particular non-resident entity is a foreign investment entity in which the particular foreign affiliate holds a participating interest that is not an exempt interest, and

(D) at any time in which the particular foreign affiliate is a controlled foreign affiliate of the particular taxpayer,

(vi) an election made under paragraph (a) of the definition “carrying value”, or paragraph (a) of the definition “financial statements”, in subsection 94.1(1), paragraphs 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection 94.2(1), subparagraph 94.2(2)(c)(i) or 94.2(3)(b)(iii) or paragraph 94.3(3)(b) for the particular taxation year were required to be filed under those provisions in respect of the particular foreign affiliate, by, and only by, the particular taxpayer, with the Minister on or before the filing-due date of the particular taxpayer for the particular taxpayer’s taxation year in which the particular taxation year ends,

(vii) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(p) to (r) or 94.2(2)(e), or subparagraph 94.3(2)(b)(iii), to send the demand to the particular taxpayer,

(viii) the amount determined under the definition “deferral amount” in subsection 94.2(1) did not include the portion of that amount that can reasonably be considered to have accrued during the period that the particular foreign affiliate was not a foreign affiliate of any person described in any of subparagraphs (f)(iii) to (vii),

(ix) the reference in subsection 94.2(19) to the expression “in computing the capital dividend account of the corporation” were read in respect of the particular foreign affiliate as a reference to the expression “and the corporation is a foreign affiliate, of a taxpayer, to which paragraph 95(2)(g.3) applies, in computing the amount prescribed to be the foreign affiliate’s exempt surplus and taxable surplus in respect of the taxpayer”,

(x) any form, information or notification, in respect of a participating interest in a foreign investment entity held in the particular taxation year by the particular foreign affiliate, that is required under any of sections 94.1 to 94.4 to be filed or included with the particular foreign affiliate’s return of income for the particular taxation year were required to be filed or included with, and only with, the particular taxpayer’s return of income for the

particular taxpayer's taxation year in which the particular taxation year ends,

(xi) designations and notifications made, and information provided, by the particular taxpayer in a form referred to in subparagraph (x) were made or provided by the particular foreign affiliate, 5

(xii) in applying paragraph (g) of the description of A in the definition "income allocation" in subsection 94.3(1) 10

(A) the expression "the particular taxpayer" referred to the particular taxpayer rather than to the particular foreign affiliate, and 15

(B) the expression "foreign affiliate" referred to a foreign affiliate of the particular taxpayer and not to a foreign affiliate of the particular foreign affiliate, 20

(xiii) in applying subparagraph 94.3(2)(b)(ii), the particular foreign affiliate were not a foreign investment entity, and 25

(xiv) the definition "income allocation" in subsection 94.3(1) were read without reference to paragraph (i) of the description of A in that definition; 30

(7) Subsections (1) to (4) and (6) apply to taxation years, of a foreign affiliate of a taxpayer, that begin after 2002.

(8) Subsection (5) applies to the 2002 and subsequent taxation years.

18. (1) Paragraph 96(1)(d) of the Act is amended by striking out the word "and" at the end of subparagraph (i), by adding the word "and" at the end of subparagraph (ii) and by adding the following after that subparagraph: 30

(iii) where at any time in a particular taxation year of the partnership the partnership's property includes a participating interest in a particular non-resident entity (in this subparagraph, as defined in subsection 94.1(1)), in applying sections 94.1 to 94.4 to the partnership for the particular taxation year in respect of the participating interest 35

(A) the expression "controlled foreign affiliate of the taxpayer" in paragraph (a) of the definition "exempt interest" in subsection 94.1(1) referred to a controlled foreign affiliate of 40

the taxpayer and not to a controlled foreign affiliate of the partnership,

(B) in computing the income of the particular non-resident entity from a participating interest in another non-resident entity, the expression “controlled foreign affiliate of the taxpayer” in paragraph (a) of the definition “exempt interest” in subsection 94.1(1) referred to a controlled foreign affiliate of the taxpayer and not to a controlled foreign affiliate of the particular non-resident entity,

(C) the definition “fresh-start year” in subsection 94.3(1) did not apply and as if a reference in section 94.3 to a fresh-start year, of the particular non-resident entity in respect of the partnership, were a reference to a taxation year of the particular non-resident entity

(I) that ends in a taxation year of the partnership that begins after 2002,

(II) that begins immediately after a preceding taxation year of the particular non-resident entity, at the end of which the particular non-resident entity was not a foreign investment entity or at the end of which the partnership property did not include a participating interest in the particular non-resident entity (other than an exempt interest, in this subparagraph as defined in subsection 94.1(1) as modified by this subparagraph), and

(III) at the end of which the particular non-resident entity is a foreign investment entity in which the partnership owns a participating interest that is not an exempt interest,

(D) the expression “in the return of income for which the taxpayer elects” in paragraph 94.1(2)(h) were replaced with the expression “in respect of which a member of the taxpayer elects”,

(E) subparagraph 94.1(2)(h)(ii) were replaced by the following:

“(ii) the non-resident entity would, if subsection 93.1(1) applied in respect of each member (resident in Canada) of the taxpayer at the end of the non-resident entity’s taxation year referred to in subparagraph (i), be a foreign affiliate of each such member in respect of which each such member would have a qualifying interest (within the meaning assigned by paragraph 95(2)(m))”,

(F) the expression “the taxpayer has not made any other election” in subparagraph 94.1(2)(h)(iii) were replaced with the expression “a member of the taxpayer has not made in respect of the taxpayer any other election”,

(G) an election made under any of paragraph (a) of the definition “carrying value”, or paragraph (a) of the definition “financial statements”, in subsection 94.1(1), paragraph 94.1(2)(e), (h) or (j), subparagraph (a)(iii) of the description of D in the definition “mark-to-market formula” in subsection 94.2(1), subparagraph 94.2(2)(c)(i), subparagraph 94.2(3)(b)(iii) or paragraph 94.3(3)(b) for a particular taxation year of the partnership were required to be filed under those provisions in respect of the partnership by the taxpayer with the Minister on or before the taxpayer’s filing-due date for the taxpayer’s taxation year in which the particular taxation year ends,

(H) the Minister were required, in sending a written demand under subparagraph 94.1(2)(e)(iii), any of paragraphs 94.1(2)(p) to (r) or 94.2(2)(e), or subparagraph 94.3(2)(b)(iii), to send the demand to the taxpayer,

(I) any form, information or notification, in respect of a participating interest, in a foreign investment entity, that is partnership property in the particular taxation year, that is required under any of sections 94.1 to 94.4 to be filed or included with a return of income were required to be filed or included with the taxpayer’s return of income for the taxpayer’s taxation year in which the particular taxation year ends,

(J) designations and notifications made, and information provided, by the taxpayer in the form referred to in clause (I) were made or provided by the partnership,

(K) in applying subparagraph 94.3(2)(b)(ii), the partnership were not a foreign investment entity, and

(L) the definition “income allocation” in subsection 94.3(1) were read without reference to paragraph (i) of the description of A;

(2) Section 96 of the Act is amended by adding the following after subsection (1.8):

**Application of
sections 94.1 to 94.4**

(1.9) If an exempt taxpayer (as defined in subsection 94.1(1)) for a 5
taxation year is a member of a partnership at any time in the year, in
applying paragraphs (1)(f) and (g) and 53(1)(e) and (2)(c) to the
taxpayer for a fiscal period of the partnership that ends in the year this
Act is to be read without reference to sections 94.1 to 94.4.

**(3) The portion of subsection 96(3) of the Act before paragraph 10
(a) is replaced by the following:**

**Agreement or
election of
partnership
members**

15

(3) If a taxpayer who was a member of a partnership at any time in
a fiscal period has, for any purpose relevant to the computation of the
taxpayer's income from the partnership for the fiscal period, made or
executed an agreement, designation or election under or in respect of the
application of any of subsections 13(4), (4.2) and (16) and 14(1.01) and 20
(6), section 15.2, subsections 20(9) and 21(1) to (4), section 22,
subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1)
and (6), 50(1) and 80(5), (9), (10) and (11), section 80.04, subsection
86.1(2), any of sections 94.1 to 94.3, paragraph 95(2)(g.2) and
subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this 25
Act were read without reference to this subsection, would be a valid
agreement, designation or election,

(4) Subsection 96(9) of the Act is replaced by the following:

**Application of
foreign partnership
rule**

30

(9) For the purposes of applying subsection (8) and this subsection,

(a) where it can reasonably be considered that one of the main
reasons that a member of a partnership is resident in Canada is to
avoid the application of subsection (8), the member is deemed not to 35
be resident in Canada; and

(b) where at any time a particular partnership is a member of another
partnership,

(i) each person or partnership that is, at that time, a member of the particular partnership is deemed to be a member of the other partnership at that time,

(ii) each person or partnership that becomes a member of the particular partnership at that time is deemed to become a member of the other partnership at that time, and

(iii) each person or partnership that ceases to be a member of the particular partnership at that time is deemed to cease to be a member of the other partnership at that time.

(5) Subsections (1) and (2) to fiscal periods that begin after 2002.

(6) Subsection (3) applies to taxation years that end after February 27, 2000. However, subsection 96(3) of the Act, as enacted by subsection (3), is

(a) before December 21, 2002, to be read without reference to the expression “, (4.2)”; and

(b) before 2003, to be read without reference to the expression “any of subsections 94.1 to 94.3, paragraph 95(2)(g.2)”.

(7) Subsection (4) applies to fiscal periods that begin after June 22, 2000.

19. (1) The portion of subsection 97(2) of the Act before paragraph (a) is replaced by the following:

**Rules where election
by partners**

(2) Notwithstanding any other provision of this Act other than subsection 13(21.2), where a taxpayer at any time in a taxation year disposes of any property (other than a specified participating interest) that is a capital property, Canadian resource property, foreign resource property, eligible capital property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

20. (1) Section 98 of the Act is amended by adding the following after subsection (6):

**Where a partnership
property is a
specified
participating interest**

(7) If at a particular time a partnership ceases to exist, the partnership is, at the time (in this subsection referred to as the “disposition time”) that is immediately before the time that is immediately before the time that is immediately before the particular time, deemed 5

(a) to have disposed of each of its properties that is at the disposition time a specified participating interest for proceeds of disposition equal to the property’s fair market value at the disposition time; and 10

(b) to have acquired the property immediately after the disposition time at a cost equal to that fair market value.

(2) Subsection (1) applies to fiscal periods that begin after 2002.

21. (1) Subparagraph 104(4)(a)(i.1) of the Act is replaced by the following: 15

(i.1) is a trust that was created by the will of a taxpayer who died after 1971 to which property was transferred in circumstances to which paragraph 70(5.2)(b) or (d) (as those paragraphs read in their application to taxation years that began before 2003), (5.2)(c) 20 or (6)(d) applied and that, immediately after any such property vested indefeasibly in the trust as a consequence of the death of the taxpayer, was a trust,

(2) Subsection 104(4) of the Act is amended by adding the following after paragraph (a.4) 25

(a.5) where the trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust’s income for the taxation year, the day (in that taxation year) on which, because a contributor (as defined by subsection 94(1)) either ceases to be resident in Canada or ceases to be a contributor to the trust because of the application at any time of paragraph 94(2)(t), there is no resident contributor (as defined by subsection 94(1)) to the trust (or the only resident contributors to the trust are entities (as defined by subsection 94(1)) each of which is an entity the maximum amount recoverable from which under the provisions referred to in paragraph 94(3)(d) is limited to the entities’ recovery limits determined under subsection 94(8)), unless subsection 94(5) applies in respect of the contributor ceasing on the day to be a resident contributor of the trust; 30 35

(3) Paragraph 104(4)(c) of the Act is replaced by the following:

(c) the day that is 21 years after any day (other than a day determined under any of paragraphs (a) to (a.5)) that is, because of this subsection, a day on which the trust is deemed to have disposed of each such property.

5

(4) Section 104 of the Act is amended by adding the following after subsection (4):

**Mark-to-market
property**

(4.1) In determining whether property is capital property for the purpose of subsection (4), this Act is to be read without reference to subparagraph 39(1)(a)(ii.3).

10

(5) The portion of subsection 104(6) of the Act before paragraph (a) is replaced by the following:

**Deduction in
computing income of
trust**

15

(6) Subject to subsections (7) and (7.01), for the purposes of this Part, there may be deducted in computing the income of a trust for a taxation year

20

(6) Section 104 of the Act is amended by adding the following after subsection (7):

**Trusts deemed to be
resident in Canada**

(7.01) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, the maximum amount deductible under subsection (6) in computing its income for the year is the amount, if any, by which

25

(a) the maximum amount that, if this Act were read without reference to this subsection, would be deductible under subsection (6) in computing its income for the year,

30

exceeds

(b) the total of

35

(i) the trust's designated income for the year (within the meaning assigned by subsection 210.2(2)) payable in the year to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

5

(ii) all amounts each of which is determined by the formula

$$A \times B$$

where

10

A is an amount (other than an amount described in subparagraph (i)) that

(A) is paid or credited in the year to the trust,

15

(B) would, if this Act were read without reference to subparagraph 94(3)(a)(vii) and sections 216 and 217, be an amount as a consequence of the payment or crediting of which the trust would have been liable to tax under Part XIII, and

20

(C) is payable in the year by the trust to a non-resident beneficiary under the trust in respect of an interest of the non-resident as a beneficiary under the trust, and

25

B is

(A) 0.35, if the trust can establish to the satisfaction of the Minister that the non-resident beneficiary to whom the amount described in A is payable is resident in a country with which Canada has a tax treaty under which the income tax that Canada may impose on the beneficiary in respect of the amount is limited, and

30

(B) 0.6, in any other case.

35

(7) Paragraph 104(21.3)(a) of the Act is replaced by the following:

(a) the total of all amounts each of which is an allowable capital loss (other than an allowable business investment loss) of the trust for the year from the disposition of a capital property, and

(8) Subsection 104(24) of the Act is replaced by the following:

40

Amount payable

(24) For the purposes of subparagraph 53(2)(h)(i.1), paragraph (c) of the definition "specified charity" in subsection 94(1), subsection 94(8)

and subsections (6), (7), (7.01), (13) and (20), an amount is deemed not to have become payable to a beneficiary in a taxation year unless it was paid in the year to the beneficiary or the beneficiary was entitled in the year to enforce payment of it.

(9) Subsections (1) to (6) and (8) apply to trust taxation years that begin after 2002. Subsections (2), (3), (5), (6) and (8) also apply to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act.

(10) Subsection (7) applies to trust taxation years that begin after 2000.

22. (1) Paragraph 107(1.1)(b) of the Act is amended by striking out the word “or” at the end of subparagraph (i), by adding the word “or” at the end of subparagraph (ii), and by adding the following after subparagraph (ii):

(iii) the interest is a participating interest in a foreign investment entity.

(2) Section 107 of the Act is amended by adding the following after subsection (4):

**Specified
participating interest**

(4.01) Subsection (2.1) applies (and subsection (2) does not apply) at any time to a distribution to a beneficiary by a trust of a property that is at that time a specified participating interest.

(3) Subsection (1) applies to taxation years that begin after 2002.

(4) Subsection (2) applies to distributions that occur in taxation years that begin after 2002.

23. (1) Subsection 107.4(1) of the Act is amended by striking out the word “and” at the end of paragraph (i), by adding the word “and” at the end of paragraph (j) and by adding the following after paragraph (j):

(k) the property is not, immediately before the disposition, a specified participating interest.

(2) Subsection (1) applies to dispositions that occur in taxation years that begin after 2002.

24. (1) The definition “income interest” in subsection 108(1) of the Act is replaced by the following:

“income interest”

5

**« participation au
revenu »**

“income interest”, of a taxpayer in a trust, means a right (whether immediate or future and whether absolute or contingent) of the taxpayer as a beneficiary under a personal trust to, or to receive, all or any part of the income of the trust and, after 1999, includes a right (other than a right acquired before 2000 and disposed of before March 2000) to enforce payment of an amount by the trust that arises as a consequence of any such right, but does not include a participating interest in a foreign investment entity;

15

(2) Paragraph (a.1) of the definition “trust” in subsection 108(1) of the Act is replaced by the following:

(a.1) a trust (other than a trust described in paragraph (a) or (d), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with benefits in respect of, or because of, an office or employment or former office or employment of any individual,

20

(3) The portion of subsection 108(3) of the Act before paragraph (a) is replaced by the following:

25

**Income of a trust in
certain provisions**

(3) For the purposes of the definition “income interest” in subsection (1) and the definition “exempt foreign trust” in subsection 94(1), the income of a trust is its income computed without reference to the provisions of this Act and, for the purposes of the definition “pre-1972 spousal trust” in subsection (1) and paragraphs 70(6)(b) and (6.1)(b), 73(1.01)(c) and 104(4)(a), the income of a trust is its income computed without reference to the provisions of this Act, minus any dividends included in that income

30

35

(4) Subsections (1) to (3) apply to trust taxation years that begin after 2002. Subsections (2) and (3) also apply to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act.

25. (1) Clause 113(1)(b)(i)(A) of the Act is replaced by the following:

(A) the corporation's relevant tax factor for the year

(2) Clause 113(1)(c)(i)(B) of the Act is replaced by the following:

(B) the corporation's relevant tax factor for the year, and

(3) Subsections (1) and (2) apply after 2000.

26. (1) The portion of section 114 of the Act before paragraph (a) is replaced by the following:

**Individual resident
in Canada for only
part of year**

114. Notwithstanding subsection 2(2) and subject to subsection 94.2(5), the taxable income for a taxation year of an individual who is resident in Canada throughout part of the year and non-resident throughout another part of the year is the amount, if any, by which

(2) Subsection (1) applies to taxation years that begin after 2002.

27. (1) Subsection 122(2) of the Act is amended by adding the following after paragraph (d):

(d.1) was not a trust to which a contribution (as defined by section 94) was made after June 22, 2000;

(2) Subsection (1) applies to trust taxation years that begin after 2002. Subsection (1) also applies to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act.

28. (1) Paragraph 126(1)(a) of the Act is replaced by the following:

(a) the part of any non-business income tax paid by the taxpayer for the year to the government of a country other than Canada that the taxpayer claims,

(2) Section 126 of the Act is amended by adding the following after subsection (1.1):

Exception

10

(1.2) Subsection (1) does not apply to non-business income tax paid by

(a) a taxpayer, in respect of a particular amount that is included in computing, in respect of the taxpayer, the amount determined under subparagraph 94.4(2)(a)(i) in respect of a participating interest of the taxpayer, if the taxpayer made a deduction under subsection 94.4(3) in respect of the particular amount; and

(b) a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

(3) Subsections (1) and (2) apply to taxation years that begin after 2002.

29. (1) Section 128.1 of the Act is amended by adding the following after subsection (1):

25

**Trusts subject to
subsection 94(3)**

(1.1) Paragraph (1)(b) does not apply, at a time in a particular taxation year of a trust, to the trust if

30

(a) the trust

(i) is resident in Canada for the particular taxation year for the purpose of computing its income, and

35

(ii) is resident in Canada immediately after the end of the particular taxation year for the purpose of computing its income; or

(b) the trust is deemed by paragraph 94(3)(c) to have disposed of property in the particular taxation year.

(2) Subsection (1) applies to trust taxation years that begin after 2002. Subsection (1) also applies to trust taxation years that begin

(a) after 2000, if the trust that makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the trust that makes a valid election under paragraph 15(2)(a) or (b) of this Act.

30. (1) Paragraph 149(10)(c) of the Act is replaced by the following:

(c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 94.1 to 94.4, 111 and 126, subsections 127(5) to (35) and section 127.3 to the corporation, the corporation is deemed to be a new corporation the first taxation year of which began at that time; and

(2) Subsection (1) applies to each corporation that, after 2002, becomes or ceases to be exempt from tax on its taxable income under Part I of the Act.

31. (1) Subparagraph 152(4)(b)(vi) of the Act is replaced by the following:

(vi) is made in order to give effect to the application of subsection 94(9) or (10) or 118.1(15) or (16).

(2) Subsection (1) applies after 2002.

32. (1) Section 160 of the Act is amended by adding the following after subsection (2):

Assessment

(2.1) The Minister may at any time assess a taxpayer in respect of any amount payable because of paragraph 94(3)(d) or (e) and the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, in respect of an assessment made under this section as though it had been made under section 152 in respect of taxes payable under this Part.

(2) The portion of subsection 160(3) of the Act before paragraph (a) is replaced by the following:

Discharge of liability

(3) Where a particular taxpayer has become jointly and severally, or solidarily, liable with another taxpayer under this section or because of paragraph 94(3)(d) or (e) in respect of part or all of a liability under this Act of the other taxpayer, 5

(3) Subsections (1) and (2) apply to assessments made after 2002.

33. (1) Paragraph (c) of the description of A in subsection 162(10.1) of the French version of the Act is replaced by the 10
following:

c) si la déclaration est à produire en application de l'article 233.2 à l'égard d'une fiducie, 5 % du total des montants représentant chacun la juste valeur marchande, au moment où il a été fait, d'un apport que la personne ou la société de personnes a fait à la fiducie avant la fin de la dernière année d'imposition de celle-ci pour laquelle la déclaration doit être produite, 15

(2) Paragraph (d) of the description of A in subsection 162(10.1) of the English version of the Act is replaced by the following: 20

(d) where the return is required to be filed under section 233.2 in respect of a trust, 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required, 25

(3) Section 162 of the Act is amended by adding the following after subsection (10.1):

Application to trust contributions

(10.11) In paragraph (d) of the description of A in subsection (10.1), 30
subsections 94(1), (2) and (9) apply, except that the references to the expression “(other than a restricted property)” in the definition “arm’s length transfer” in subsection 94(1) are to be read as references to the expression “(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)”. 35

(4) The portion of subsection 162(10.3) of the Act before paragraph (a) is replaced by the following:

**Application to
partnerships**

(10.3) For the purposes of paragraph (f) of the description of A in subsection (10.1) and subsection (10.2), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership,

(5) Subsection 162(10.4) of the Act is repealed.

(6) Subsections (1) to (5) apply to returns in respect of taxation years that begin after 2002. Subsections (1) to (5) also apply to returns in respect of taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) or (b) of this Act.

34. (1) Paragraph 163(2.4)(b) of the Act is replaced by the following:

(b) where the return is required to be filed under section 233.2 in respect of a trust, the greater of

(i) \$24,000, and

(ii) 5% of the total of all amounts each of which is the fair market value, at the time it was made, of a contribution of the person or partnership made to the trust before the end of the last taxation year of the trust in respect of which the return is required;

(2) Section 163 of the Act is amended by adding the following after subsection (2.4):

**Application to trust
contributions**

(2.41) In subparagraph (2.4)(b)(ii), subsections 94(1), (2) and (9) apply, except that the references to the expression “(other than a restricted property)” in the definition “arm’s length transfer” in subsection 94(1) are to be read as references to the expression “(other than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)”.

(3) The portion of subsection 163(2.6) of the Act before paragraph (a) is replaced by the following:

**Application to
partnerships**

(2.6) For the purposes of paragraph (2.4)(d) and subsection (2.5), in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a partnership, 5

(4) Subsection 163(2.91) of the Act is repealed.

(5) Subsections (1) to (4) apply to returns in respect of taxation years that begin after 2002. Subsections (1) to (4) also apply to returns in respect of taxation years that begin 10

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) of this Act; and

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) or (b) of this Act. 15

35. (1) Subsection 215(1) of the Act is replaced by the following:

**Withholding and
remittance of tax**

215. (1) When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Part were read without reference to subsection 216.1(1) or this Act were read without reference to subparagraph 94(3)(a)(vii), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form. 25

(2) Subsection (1) applies to trust taxation years that begin after 2002. It also applies to trust taxation years that begin

(a) after 2000, if the trust makes a valid election under paragraph 15(2)(a) of this Act; and 30

(b) after 2001, if the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act.

36. (1) Section 216 of the Act is amended by adding the following after subsection (4):

Optional method of payment

(4.1) If a trust is deemed by subsection 94(3) to be resident in Canada for a taxation year for the purpose of computing the trust's income for the year, a person who is otherwise required by subsection 215(3) to remit in the year, in respect of the trust, an amount to the Receiver General in payment of tax on rent on real property or on a timber royalty may elect in prescribed form filed with the Minister under this subsection not to remit under subsection 215(3) in respect of amounts received after the election is made, and if that election is made, the elector shall,

(a) when any amount is available out of the rent or royalty received for remittance to the trust, deduct 25% of the amount available and remit the amount deducted to the Receiver General on behalf of the trust on account of the trust's tax under Part I; and

(b) if the trust does not file a return for the year as required by section 150, or does not pay the tax that the trust is liable to pay under Part I for the year within the time required by that Part, on the expiration of the time for filing or payment, as the case may be, pay to the Receiver General, on account of the trust's tax under Part I, the amount by which the full amount that the elector would otherwise have been required to remit in the year in respect of the rent or royalty exceeds the amounts that the elector has remitted in the year under paragraph (a) in respect of the rent or royalty.

(2) Subsection (1) applies to trust taxation years that begin after 2002, except that an election referred to in subsection 216(4.1) of the Act, as enacted by subsection (1), is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which this Act is assented to.

37. (1) The definitions "specified beneficiary" and "specified foreign trust" in subsection 233.2(1) of the Act are repealed.

(2) Subsections 233.2(2) and (3) of the Act are replaced by the following:

Rule of application

(2) In this section and paragraph 233.5(c.1), subsections 94(1) and (2) apply, except that the references to the expression "(other than a restricted property)" in the definition "arm's length transfer" in subsection 94(1) are to be read as references to the expression "(other

than property that is not described in any of subclauses (b)(i)(A)(I) to (III) but to which paragraph 94(2)(g) applies)".

(3) Subsection 233.2(4) of the Act is replaced by the following:

**Filing information
on foreign trusts**

5

(4) A person shall file an information return in prescribed form, in respect of a taxation year of a particular trust (other than an exempt trust or a trust described in any of paragraphs (c) to (i) of the definition "exempt foreign trust" in subsection 94(1)), with the Minister on or before the person's filing-due date for the person's taxation year in 10 which the particular trust's taxation year ends if

(a) the particular trust is non-resident at the end of that taxation year of the particular trust;

15

(b) a contribution has been made by the person to the particular trust at any time in that taxation year of the particular trust or in a preceding taxation year of the particular trust; and

(c) the person

20

(i) is resident in Canada at the end of that taxation year of the particular trust, and

(ii) is not, at the end of that taxation year of the particular trust, 25

(A) a mutual fund corporation,

(B) a non-resident-owned investment corporation,

30

(C) a person (other than a trust) all of whose taxable income for the person's taxation year that includes that time is exempt from tax under Part I,

(D) a trust all of the taxable income of which for its taxation year that includes that time is exempt from tax under Part I, 35

(E) a mutual fund trust,

(F) a trust described in any of paragraphs (a) to (e.1) of the 40 definition "trust" in subsection 108(1),

(G) a registered investment,

(H) a trust in which all persons beneficially interested are persons described in clauses (A) to (G), or

(I) a person who is a contributor to the particular trust by reason only of being a contributor to a trust described in any of clauses (D) to (H). 5

Similar arrangements

(4.1) In this section and sections 162, 163 and 233.5, a person's obligations under subsection (4) (except to the extent that they are waived in writing by the Minister) are to be determined as if a transfer or loan were a contribution to which paragraph (4)(b) applied, an arrangement or entity were a non-resident trust throughout the calendar year that includes the time referred to in paragraph (a) and a taxation year of the arrangement or entity were that calendar year, if 10 15

(a) the person at any time, directly or indirectly, transferred or loaned the property to be held 20

(i) under the arrangement and the arrangement is governed by laws that are not laws of Canada or a province, or

(ii) by the entity and the entity is a non-resident entity (as defined by subsection 94.1(1)); 25

(b) the transfer or loan is not an arm's length transfer;

(c) the transfer or loan is not solely in exchange for property that would be described in paragraphs (a) to (i) of the definition "specified foreign property" in subsection 233.3(1) if that definition were read without reference to paragraphs (j) to (q); 30

(d) the arrangement or entity is not a trust in respect of which the person would, if this Act were read without reference to this subsection, be required to file an information return for a taxation year that includes that time; and 35

(e) the arrangement or entity is, for a taxation year or fiscal period of the arrangement or entity that includes that time, not 40

(i) an exempt foreign trust,

(ii) a foreign affiliate in respect of which the person is a reporting entity (within the meaning assigned by subsection 233.4(1)), or 45

(iii) an exempt trust.

(4) Subsections (1) to (3) apply to returns in respect of trust taxation years that begin after 2002. Subsections (1) to (3) also apply to returns in respect of trust taxation years that begin

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) of this Act; and

5

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) or (b) of this Act.

(5) A return required to be filed because of this subsection is deemed to have been filed with the Minister of National Revenue on a timely basis if it is filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year of the trust that includes the day on which this Act is assented to.

10

38. (1) Subparagraph (a)(iv) of the definition "bien étranger déterminé" in subsection 233.3(1) of the French version of the Act is replaced by the following:

15

(iv) la participation dans une fiducie non-résidente ou dans une fiducie qui serait un non-résident en l'absence du sous-alinéa 94(3)a)(v),

(2) Paragraph (a) of the definition "bien étranger déterminé" in subsection 233.3(1) of the French version of the Act is amended by adding the following after subparagraph (iv):

20

(iv.1) l'intérêt dans une police d'assurance qui est réputé, par le paragraphe 94.2(11), être une participation déterminée dans une entité non-résidente,

(3) Subparagraph (b)(iii) of the definition "bien étranger déterminé" in subsection 233.3(1) of the French version of the Act is repealed.

25

(4) Subparagraph (b)(iv) of the definition "bien étranger déterminé" in subsection 233.3(1) of the French version of the Act is replaced by the following:

30

(iv) la participation dans une fiducie non-résidente (ou dans une fiducie qui serait un non-résident en l'absence du sous-alinéa 94(3)a)(v)) qui n'a pas été acquise pour une contrepartie par la personne ou la société de personnes ou par une personne qui lui est liée,

35

(5) Paragraph (d) of the definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is replaced by the following:

(d) an interest in a non-resident trust or in a trust that, if this Act were read without reference to subparagraph 94(3)(a)(v), would be non-resident, 5

(6) The definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is amended by adding the following after paragraph (d):

(d.1) an interest in an insurance policy that is deemed by subsection 94.2(11) to be a participating interest in a non-resident entity, 10

(7) Paragraph (l) of the definition “specified foreign property” in subsection 233.3(1) of the English version of the Act is repealed.

(8) Paragraph (m) of the definition “specified foreign property” in subsection 233.3(1) of the Act is replaced by the following: 15

(m) an interest in a non-resident trust (or in a trust that, if this Act were read without reference to subparagraph 94(3)(a)(v), would be non-resident) that was not acquired for consideration by the person or partnership or by a person related to the person or partnership,

(9) Subsections (1), (3) to (5), (7) and (8) apply to returns in respect of trust taxation years that begin after 2002. Subsections (1), (3) to (5), (7) and (8) also apply to returns in respect of trust taxation years that begin 20

(a) after 2000, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) of this Act; and 25

(b) after 2001, if the return relates to a trust that makes a valid election under paragraph 15(2)(a) or (b) of this Act.

(10) Subsections (2) and (6) apply to returns for taxation years that begin after 2002.

39. (1) Subsection 233.4(1) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b). 30

(2) Subparagraph 233.4(1)(c)(ii) of the Act is replaced by the following:

(ii) of which a non-resident corporation is a foreign affiliate at any time in the fiscal period.

(3) The portion of subsection 233.4(2) of the Act before paragraph (a) is replaced by the following:

Rules of application

5

(2) For the purpose of this section, in determining whether a non-resident corporation is a foreign affiliate or a controlled foreign affiliate of a taxpayer resident in Canada or of a partnership

(4) Subsections (1) to (3) apply to taxation years and fiscal periods that begin after 2002. Subsections (1) to (3) also apply to 10
taxation years and fiscal periods that begin

(a) after 2000, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2001 or 2002 and the trust makes a valid election under paragraph 15(2)(a) of this Act; and 15

(b) after 2001, if the taxation year or fiscal period relates to a trust the taxation year of which begins in 2002 and the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act.

40. (1) Paragraph 233.5(c) of the Act is replaced by the following:

(c) if the return is required to be filed under section 233.2 in respect of a trust, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 and before June 23, 2000 that gave rise to the requirement to file a return for a taxation year of the trust that began before 2003 or that affects the information to be reported in the return, it was reasonable to expect that sufficient 20
information would be available to the person or partnership to comply 25
with section 233.2 in respect of each taxation year of the trust that began before 2003;

(c.1) if the return is required to be filed under section 233.2, at the 30
time of each contribution (determined with reference to subsection 233.2(2)) made by the person or partnership after June 22, 2000 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or 35
partnership to comply with section 233.2;

(c.2) if the return is required to be filed under section 233.4 by a person or partnership in respect of a corporation that is a controlled foreign affiliate for the purpose of that section of the person or 40

partnership, at the time of each transaction, if any, entered into by the person or partnership after March 5, 1996 that gives rise to the requirement to file the return or that affects the information to be reported in the return, it was reasonable to expect that sufficient information would be available to the person or partnership to comply with section 233.4; and 5

(2) Subsection (1) applies to returns in respect of taxation years that begin after 2002. Subsection (1) also applies in respect of taxation years that begin

(a) in 2001 or 2002, if the trust makes a valid election under paragraph 15(2)(a) of this Act, in which case section 233.5 of the Act shall be read, in respect of the trust, without reference to paragraph 233.5(c), as enacted by subsection (1); and 10

(b) in 2002, if the trust makes a valid election under paragraph 15(2)(a) or (b) of this Act, in which case section 233.5 of the Act shall be read, in respect of the trust, without reference to paragraph 233.5(c), as enacted by subsection (1). 15

41. (1) The definition “controlled foreign affiliate” in subsection 248(1) of the Act is replaced by the following:

**“controlled foreign
affiliate”**

**« société étrangère
affiliée contrôlée »**

“controlled foreign affiliate” has, except as expressly otherwise provided in this Act, the meaning assigned by subsection 95(1);

(2) The definition “cost amount” in subsection 248(1) of the Act is amended by adding the following after paragraph (c.1):

(c.2) where the cost at that time to the taxpayer of the property is determined under subsection 94.2(13), the cost so determined,

(3) The definition “inventory” in subsection 248(1) of the Act is replaced by the following:

“inventory”

« inventaire »

“inventory” means a description of property (other than a property to which subsection 94.1(4) or subsection 94.2(3) applies for a taxation year of a taxpayer) the cost or value of which is relevant in computing the taxpayer’s income from a business for the taxation

year or would have been so relevant if the income from the business had not been computed in accordance with the cash method and, with respect to a farming business, includes all of the livestock held in the course of carrying on the business;

(4) The definition “share” in subsection 248(1) of the Act is replaced by the following: 5

“share”

« action »

“share”, except as the context otherwise requires, means a share or a fraction of a share of the capital stock of a corporation and, for 10 greater certainty, a share of the capital stock of a corporation includes a share of the capital stock of a cooperative corporation (within the meaning assigned by subsection 136(2)) and a share of the capital of a credit union;

(5) Subsection 248(1) of the Act is amended by adding the following in alphabetical order: 15

**“foreign accrual
property income”**

**« revenu étranger
accumulé, tiré de
biens »**

20

“foreign accrual property income” has the meaning assigned by section 95;

**“foreign investment
entity”**

25

**« entité de placement
étrangère »**

“foreign investment entity” has the meaning assigned by section 94.1. 30

**“non-discretionary
trust” « fiducie non
discretionnaire »**

35

“non-discretionary trust” has the meaning assigned by subsection 17(15);

**“participating
interest”**

« *participation
déterminée* »

“participating interest” has the meaning assigned by section 94.1;

**“specified
participating
interest”**

« *participation
déterminée
désignée* »

“specified participating interest”, means a property of a taxpayer that is

(a) a participating interest of the taxpayer, other than an exempt interest (as defined in subsection 94.1(1)) of the taxpayer, in a foreign investment entity, or

(b) a participating interest of the taxpayer, other than an exempt interest (as would be defined in subsection 94.1(1) if the definition “exempt interest” in that subsection were read without reference to subparagraphs (a)(i) and (ii) of that definition) of the taxpayer, in a tracking entity (as defined in subsection 94.2(1));

(6) Subsection 248(3) of the Act is replaced by the following:

**Certain
arrangements under
civil law**

(3) For the purposes of this Act,

(a) if at any time property is subject to a usufruct, right of use or habitation, or substitution,

(i) the usufruct, right of use or habitation, or substitution, as the case may be, is deemed to be at that time

(A) a trust, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, is created by will, a trust created by will,

(ii) the property is deemed

(A) where the usufruct, right of use or habitation, or substitution, as the case may be, arises on the death of a testator, to have been transferred to the trust on and as a consequence of the death of the testator, and not otherwise, and

(B) where the usufruct, right of use or habitation, or substitution, as the case may be, arises otherwise, to have been transferred (at the time it first became subject to the usufruct, right of use or habitation, or substitution, as the case may be) to the trust by the person that granted the usufruct, right of use or habitation, or substitution, and

(iii) the property is deemed to be, throughout the period in which it is subject to the usufruct, right of use or habitation, or substitution, as the case may be, held by the trust, and not otherwise;

(b) if at any time property is property of a foundation (other than a foundation that is at that time a corporation or trust determined without reference to this paragraph),

(i) the foundation is deemed to be at that time

(A) a trust, and

(B) where the foundation is created by will, a trust created by will,

(ii) the property is deemed to have been transferred (at the time it first became property of the foundation) to the trust by the person that transferred the property to the foundation, and

(iii) the property is deemed to be, throughout the period in which it is property of the foundation, held by the trust, and not otherwise;

(c) an arrangement (other than a partnership or an arrangement that is a trust determined without reference to this paragraph) is deemed to be a trust and property subject to rights and obligations under the arrangement is, if the arrangement is deemed by this paragraph to be a trust, deemed to be held in trust and not otherwise, where the arrangement

(i) is established on or before Announcement Date by or under a written contract that

(A) is governed by the laws of the Province of Quebec, and

(B) provides that, for the purposes of this Act, the arrangement shall be considered to be a trust, and

(ii) creates rights and obligations that are substantially similar to the rights and obligations under a trust (determined without reference to this subsection);

(d) a person who has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of property that is referred to in any of paragraphs (a) to (c) is deemed to be beneficially interested in the trust; and

(e) notwithstanding that a property is at any time subject to a servitude, the property is deemed to be beneficially owned by a person at that time if, at that time the person has in relation to the property,

(i) the right of ownership,

(ii) a right as a lessee under an emphyteutic lease, or

(iii) a right as a beneficiary in a trust.

(7) Subsections (1), (2), (4) and (5) apply to taxation years that begin after 2002.

(8) Subsection (3) applies to fiscal periods that begin after 2002.

(9) Subsection (6) applies to taxation years that begin after Announcement Date.

PART 2

Income Tax Amendments Act, 2000

42. (1) Paragraph 53(2)(a) of the *Income Tax Amendments Act, 2000* is replaced by the following:

(a) in respect of transfers that occur in 2000, 2001 or 2002, for the purpose of subsection 73(1) of the Act, as enacted by subsection (1), the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it reads in its application to taxation years that began before 2003;

(2) Subsection (1) is deemed to come into force on June 14, 2001.

43. (1) Subsection 80(19) of the Act is replaced by the following:

(19) Subsections (1) to (4) apply to the 2000 and subsequent taxation years except that, in respect of transfers in 2000, 2001 or 2002, for the purposes of subsection 107(1) of the Act, as enacted by this section, the residence of a transferee trust shall be determined without reference to section 94 of the Act, as it read in its application to taxation years that began before 2003. 5

(2) Subsection (1) is deemed to come into force on June 14, 2001.

